

<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS, ) Plaintiff, ) VS. ) ERIC H. HOLDER, JR. in his ) official capacity as Attorney ) General of the United States, ) Defendant, ) ERIC KENNIE, et al, ) Defendant-Intervenors, ) TEXAS STATE CONFERENCE OF ) CASE NO. 1:12-CV-00128 NAACP BRANCHES, ) (RMC-DST-RLW) Defendant-Intervenors, ) Three-Judge Court TEXAS LEAGUE OF YOUNG VOTERS ) EDUCATION FUND, et al, ) Defendant-Intervenors, ) TEXAS LEGISLATIVE BLACK ) CAUCUS, et al, ) Defendant-Intervenors, ) VICTORIA RODRIGUEZ, et al., ) Defendant-Intervenors. )</p> <p style="text-align: center;">***** ORAL DEPOSITION OF ANN MCGEEHAN MAY 31, 2012 *****</p>	<p style="text-align: center;">3</p> <p>1 2 3 APPEARANCES 4 FOR THE PLAINTIFF, STATE OF TEXAS: 5 Adam Mortara BARTLIT BECK HERMAN PALENCHAR &amp; SCOTT LLP 6 Courthouse Place 54 West Hubbard Street, Suite 300 7 Chicago, IL 60654 (312) 494-4469 adam.mortara@bartlit-beck.com 8 Jay Dyre 9 ATTORNEY GENERAL OF THE STATE OF TEXAS 209 West 14th Street 10 8th Floor Austin, TX 78701 11 (512) 936-1307 anne.wilsonsattorneygeneral.gov 12 13 FOR THE DEFENDANT, HOLDER, ET AL: 14 Elizabeth S. Westfall 15 Daniel Freeman Maria Rios 16 U.S. DEPARTMENT OF JUSTICE 950 Pennsylvania Avenue, NW 17 NWB - Room 7202 Washington, DC 20530 18 (202) 305-7766 elizabeth.westfall@usdoj.gov 19 20 FOR THE DEFENDANT-INTERVENOR TEXAS STATE CONFERENCE OF NAACP BRANCHES AND THE MEXICAN AMERICAN LEGISLATIVE CAUCUS: 21 Ezra D. Rosenberg 22 DECHERT, LLP Suite 500 23 902 Carnegie Center Princeton, NJ 08540-6531 24 (609) 955-3200 ezra.rosenberg@dechert.com 25</p>
<p style="text-align: center;">2</p> <p>1 ORAL DEPOSITION OF ANN MCGEEHAN, produced as a 2 witness at the instance of the Defendant, was duly 3 sworn, was taken in the above-styled and numbered cause 4 on the MAY 31, 2012, from 9:45 a.m. to 6:50 p.m., before 5 Chris Carpenter, CSR, in and for the State of Texas, 6 reported by machine shorthand, at the offices of 7 DECHERT, LLP, 300 W. 6th Street, Suite 2010, Austin, 8 Texas 78701, pursuant to the Federal Rules of Civil 9 Procedure and the provisions stated on the record or 10 attached hereto. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p>1 FOR THE MALDEF INTERVENORS: 2 Nina Perales Janine Lopez 3 Luis Figueroa MALDEF 4 110 Broadway Street, Suite 300 San Antonio, TX 78205 5 (210) 224-5476 nperales@maldef.org 6 7 FOR THE TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND INTERVENORS: 8 Adam M. Harris Brian Chen (law clerk) 9 FRIED, FRANK, HARRIS, SHRIVER &amp; JACOBSON, LLP One New York Plaza 10 New York, New York 10004 (212) 859-8953 adam.harris@friedfrank.com 11 Also present: 12 Juan Carlos Ibarra, The Advancment Project 13 14 15 16 17 18 19 20 21 22 23 24 25</p>



<p style="text-align: center;">5</p> <p>1     Appearances.....3</p> <p>2     ANN MCGEEHAN</p> <p>3         Examination by Ms. Westfall.....7</p> <p>4         Examination by Ms. Perales.....211</p> <p>5     Signature and Changes.....297</p> <p>6     Reporter's Certificate.....299</p> <p>7         U.S. EXHIBITS</p> <p>8     NO. DESCRIPTION                      PAGE MARKED</p> <p>9         280   Revised Privilege Log, May 11, 2012       34</p> <p>10        281   Supplemented Privilege Log, May 21, 2012   38</p> <p>11        282   Amended Notice of Deposition           62</p> <p>12        283   House Committee on Elections Subcommittee   88</p> <p>13        284   Excerpt of Transcript of Senate Committee</p> <p>14            on Verification Voters, March 17, 2005   116</p> <p>15        285   Excerpt of Transcript of Senate Committee</p> <p>16            on State Affairs, April 30, 2007 (House</p> <p>17            Bill 218 Public Hearing)                   134</p> <p>18        286   Texas Legislature Online History, SB 362   145</p> <p>19        286   Houston Chronicle Article: Voter ID Fight</p> <p>20            Appears Certain In Texas                   145</p> <p>21        287   Transcript Excerpt of Senate Committee of</p> <p>22            the Whole, Jan. 25, 2011               164</p> <p>23        288   Excerpt of Transcript of Select Committee</p> <p>24            on Voter Identification, March 1, 2011   184</p> <p>25         INTERVENOR RODRIGUEZ EXHIBITS</p> <p>       R-1   Election Line Weekly Article, Dec 15, 2011   212</p> <p>       R-2   Transcript Excerpt of Committee on</p> <p>       Elections Meeting, 6/14/10                   228</p> <p>       R-3   SOS Andrade Memo, March 6, 2009       247</p> <p>       R-4   SOS Andrade Letter, July 25, 2011       252</p>	<p style="text-align: center;">7</p> <p>1                   ANN MCGEEHAN,</p> <p>2     having been first duly sworn to testify the truth, the</p> <p>3     whole truth, and nothing but the truth, testified as</p> <p>4     follows:</p> <p>5                   EXAMINATION</p> <p>6     BY MS. WESTFALL:</p> <p>7         Q.   Good morning, Ms. McGeehan. How are you?</p> <p>8         A.   Good.</p> <p>9         Q.   Could you state and spell your name for the</p> <p>10        record, please?</p> <p>11        A.   Ann McGeehan, A-n-n, M-c-G-e-e-h-a-n.</p> <p>12        Q.   Thank you. My name is Elizabeth Westfall. I</p> <p>13        represent the Attorney General in this action.</p> <p>14        I'm going to allow others around the table</p> <p>15        to introduce themselves.</p> <p>16        MR. FREEMAN: Dan Freeman on behalf of the</p> <p>17        Attorney General.</p> <p>18        MS. RIOS: Maria H. Rios on behalf of the</p> <p>19        Attorney General.</p> <p>20        MS. PERALES: Nina Perales with MALDEF.</p> <p>21        MS. LOPEZ: Janine Lopez with MALDEF.</p> <p>22        MR. FIGUEROA: Luis Figueroa with MALDEF.</p> <p>23        MR. HARRIS: I'm Adam Harris with Fried,</p> <p>24        Frank, Harris, Shiver &amp; Jacobson, LLP, on behalf of</p> <p>25        Defendant Intervenor Texas League of Young Voter</p>
<p style="text-align: center;">6</p> <p>1     R-5   Senator Ellis Letter, Oct. 27, 2011       259</p> <p>2     R-6   Senate Journal, March 18, 2009           264</p> <p>3     R-7   E-Mail Chain, Sept. 15, 2011           266</p> <p>4     R-8   McGeehan Letter, Sept. 7, 2011         268</p> <p>5     R-9   McGeehan Letter, Oct. 4, 2011           272</p> <p>6     R-10   McGeehan Letter, Oct. 27, 2011         274</p> <p>7     R-11   SOS Letter, Jan. 6, 2012               279</p> <p>8     R-12   SOS Letter, Jan. 12, 2012             279</p> <p>9     R-13   HAVA Request For Proposal Number 12111   288</p> <p>10    R-14   Eligibility for Election Identification   291</p> <p>11         Certificate</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">8</p> <p>1     Education Fund, and with me is law clerk Brian Chen.</p> <p>2     MR. IBARRA: Juan Carlos Ibarra with the</p> <p>3     Advancement Project.</p> <p>4     MR. DYER: I'm Jay Dyer with the State of</p> <p>5     Texas.</p> <p>6     MR. MORTARA: Adam Mortara for the State</p> <p>7     of Texas and the witness.</p> <p>8     Q.   (By Ms. Westfall) Ms. McGeehan, have you had</p> <p>9     your deposition taken before?</p> <p>10    A.   Yes.</p> <p>11    Q.   So I'm going to go through some ground rules</p> <p>12    just in case you have forgotten the grounds rules for</p> <p>13    having your deposition taken.</p> <p>14    A.   Okay.</p> <p>15    Q.   You're here to testify today truthfully,</p> <p>16    accurately, and completely. The court reporter will</p> <p>17    prepare a transcript of everything that is said today,</p> <p>18    so you must listen for me to ask my question and wait</p> <p>19    for me to ask my question before you give your answer.</p> <p>20    Okay?</p> <p>21    A.   Uh-huh.</p> <p>22    Q.   And because there is a transcription of this</p> <p>23    deposition, please don't say "uh-huh," "nuh-uh" or shake</p> <p>24    your head.</p> <p>25    A.   Yes.</p>



<p style="text-align: center;">9</p> <p>1 Q. Otherwise, it will be difficult to read it on</p> <p>2 the transcript. Okay?</p> <p>3 A. Yes.</p> <p>4 Q. I will try to ask you clear questions, but if</p> <p>5 you don't understand a question that I ask, please ask</p> <p>6 me for an explanation. Okay?</p> <p>7 A. Uh-huh, yes.</p> <p>8 Q. If you wish to stop and take a break, that's</p> <p>9 fine, but if I have a question pending, I'd ask that you</p> <p>10 go ahead and answer it first before you take a break.</p> <p>11 All right?</p> <p>12 A. Okay.</p> <p>13 Q. You understand that you're oath, and you may be</p> <p>14 subject to penalty of perjury for giving false or</p> <p>15 misleading testimony today?</p> <p>16 A. Yes.</p> <p>17 Q. And do you understand these instructions?</p> <p>18 A. Yes.</p> <p>19 Q. Are you on any medication today that would</p> <p>20 affect your ability to testify truthfully?</p> <p>21 A. No.</p> <p>22 Q. Is there any reason why you can't testify</p> <p>23 truthfully and accurately today?</p> <p>24 A. No.</p> <p>25 Q. During this deposition, I may use the terms</p>	<p style="text-align: center;">11</p> <p>1 A. Right.</p> <p>2 Q. When I also refer to the term minority voters,</p> <p>3 I'm going to be referring to voters who are not White or</p> <p>4 not Anglo. Do you understand?</p> <p>5 A. Okay.</p> <p>6 Q. Great. Are you represented by counsel today?</p> <p>7 A. Yes.</p> <p>8 Q. Who is that?</p> <p>9 A. Adam Motara.</p> <p>10 Q. How many times have you been deposed before?</p> <p>11 A. Multiple times.</p> <p>12 Q. Okay.</p> <p>13 A. Yeah. I can't remember exactly.</p> <p>14 Q. Were any of them in your professional capacity?</p> <p>15 A. All of them were in my professional, when I was</p> <p>16 at the Secretary of State's Office.</p> <p>17 Q. Very good. Have you testified in court before?</p> <p>18 A. Yes.</p> <p>19 Q. How many times?</p> <p>20 A. Multiple times.</p> <p>21 Q. And were these all election cases you were</p> <p>22 involved in?</p> <p>23 A. Yes.</p> <p>24 Q. When were you most recently deposed?</p> <p>25 A. Let me see. I need to think about that for a</p>
<p style="text-align: center;">10</p> <p>1 voter ID and photo ID interchangeably. I want you to</p> <p>2 interpret them broadly to mean a requirement that a</p> <p>3 voter present a form of identification, whether it has a</p> <p>4 photo on them or otherwise, when voting in person before</p> <p>5 being able to vote by regular ballot. Is that okay?</p> <p>6 A. Well, that may be confusing, as far as current</p> <p>7 law, as far as what identification. When you use that</p> <p>8 term, are you talking about what's required under the SB</p> <p>9 14 or what was required before?</p> <p>10 Q. I will try to be as precise as possible, but I</p> <p>11 may say photo ID when, in fact, it's a voter ID that is</p> <p>12 not necessarily requiring photo form of identification.</p> <p>13 I will try to be precise, and if you're confused about</p> <p>14 my question, please ask me, and I'll clarify.</p> <p>15 A. Okay.</p> <p>16 Q. But I may use the terms interchangeably, and I</p> <p>17 just want you to interpret them broadly, okay?</p> <p>18 A. Okay.</p> <p>19 Q. Great. When I refer to the Division, I will be</p> <p>20 referring to the Election Division of the Secretary of</p> <p>21 State for Texas, okay?</p> <p>22 A. Okay.</p> <p>23 Q. And if I refer to the Secretary of State, I</p> <p>24 mean the Secretary of State for the state of Texas,</p> <p>25 okay?</p>	<p style="text-align: center;">12</p> <p>1 second. I don't -- probably in 2008, in May of 2008, on</p> <p>2 a lawsuit against the Secretary of State and the State</p> <p>3 of Texas, Ray versus the State of Texas.</p> <p>4 Q. Great. And was that a state court matter?</p> <p>5 A. It was federal.</p> <p>6 Q. Okay. Very good.</p> <p>7 What did you do to prepare for your</p> <p>8 deposition today?</p> <p>9 A. I had two meetings with Adam Mortara and Jay</p> <p>10 Dyer to generally discuss the deposition.</p> <p>11 Q. Who was present in that meeting besides those</p> <p>12 two gentlemen and yourself?</p> <p>13 A. Just those two people.</p> <p>14 Q. Did you review any documents in advance of this</p> <p>15 deposition?</p> <p>16 MR. MORTARA: You can answer that question</p> <p>17 yes or no.</p> <p>18 A. Yes.</p> <p>19 Q. (By Ms. Westfall) Could you tell me the general</p> <p>20 nature of the documents.</p> <p>21 MR. MORTARA: Don't answer that question.</p> <p>22 MS. WESTFALL: Are you instructing the</p> <p>23 witness not to answer based on privilege?</p> <p>24 MR. MORTARA: Yes.</p> <p>25 MS. WESTFALL: Because I'm trying to ask</p>



<p style="text-align: center;">13</p> <p>1 questions about a privilege log, Mr. Mortara.</p> <p>2 MR. MORTARA: Yes. I am instructing the</p> <p>3 witness not to answer the question.</p> <p>4 Q. (By Ms. Westfall) Other than your attorneys,</p> <p>5 did you speak with anyone about your deposition today?</p> <p>6 A. Only to inform my current employers that I'd be</p> <p>7 out.</p> <p>8 Q. Did you bring any notes or documents with you</p> <p>9 today?</p> <p>10 A. No.</p> <p>11 Q. Can you tell me where you went to college?</p> <p>12 A. University of Texas at Austin.</p> <p>13 Q. What year did you graduate?</p> <p>14 A. '86.</p> <p>15 Q. And did you get any education after that time?</p> <p>16 A. I went to law school and graduated in August of</p> <p>17 '88, U.T. law School.</p> <p>18 Q. Thank you. Are you licensed to practice law?</p> <p>19 A. Yes.</p> <p>20 Q. Where are you licensed?</p> <p>21 A. Texas. Only Texas.</p> <p>22 Q. Could you tell me your first job out of law</p> <p>23 school?</p> <p>24 A. I worked for a solo practitioner attorney in</p> <p>25 Houston, Ernest Ortiz, for about a year.</p>	<p style="text-align: center;">15</p> <p>1 A. The May 12th city election.</p> <p>2 Q. Did you vote in person?</p> <p>3 A. Yes.</p> <p>4 Q. How far is your polling place from your house?</p> <p>5 A. Maybe a mile.</p> <p>6 Q. Do you usually vote in person?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever witnessed anyone try to</p> <p>9 impersonate another voter while you have been voting?</p> <p>10 A. No.</p> <p>11 Q. Have you ever witnessed a noncitizen voting</p> <p>12 while you've been voting?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Have you ever challenged a voter's eligibility</p> <p>15 to vote?</p> <p>16 A. No.</p> <p>17 Q. Is there a time when you were promoted in the</p> <p>18 Elections Division after you had the staff attorney</p> <p>19 position?</p> <p>20 A. Yes.</p> <p>21 Q. When was that?</p> <p>22 A. In July of 1991, I was promoted to director of</p> <p>23 the Legal section.</p> <p>24 Q. Could you describe your responsibilities in</p> <p>25 that capacity?</p>
<p style="text-align: center;">14</p> <p>1 Q. Did you find employment after that time?</p> <p>2 A. Yes. I went from there to the Secretary of</p> <p>3 State's Office in September of '89.</p> <p>4 Q. When you were working for that practitioner,</p> <p>5 did you do any election law?</p> <p>6 A. No.</p> <p>7 Q. And what was your first position with the</p> <p>8 Elections Division?</p> <p>9 A. I was a staff attorney.</p> <p>10 Q. What year did you have that -- did you start</p> <p>11 that position?</p> <p>12 A. September of 1989.</p> <p>13 Q. What were your responsibilities in that</p> <p>14 position?</p> <p>15 A. We provided legal advice to election officials</p> <p>16 across the state. There's a toll free number. We</p> <p>17 provided advice via phone, letter. We prepared</p> <p>18 submissions to the Justice Department, presented at</p> <p>19 conferences to educate Election officials.</p> <p>20 Q. What was your role in preparing submissions to</p> <p>21 the Justice Department?</p> <p>22 A. As a staff attorney, I would do the initial</p> <p>23 draft, and then it would go up for review. I didn't</p> <p>24 sign those.</p> <p>25 Q. When is the last time you voted?</p>	<p style="text-align: center;">16</p> <p>1 A. I managed the attorneys, which there were</p> <p>2 between, you know, five and seven attorneys there. And</p> <p>3 was, you know, in charge of the submissions, most of the</p> <p>4 written correspondence that came out of the Legal</p> <p>5 Division or the Elections Division itself. I was</p> <p>6 responsible for testifying at legislative committees,</p> <p>7 assisting with any litigation, things of that nature.</p> <p>8 Q. Were you ultimately responsible for all</p> <p>9 submissions that were submitted pursuant to Section 5 of</p> <p>10 the Voting Rights Act?</p> <p>11 A. Not as the legal director, because those were</p> <p>12 signed by the director of the Elections Division. But</p> <p>13 we prepared them to -- you know, for his signature.</p> <p>14 Q. But you didn't -- you weren't responsible for</p> <p>15 certain types of submissions; is that right? You were</p> <p>16 responsible for all submissions?</p> <p>17 A. Right.</p> <p>18 Q. Could you describe your particular specific</p> <p>19 role as legal director as it pertained to submissions</p> <p>20 under Section 5?</p> <p>21 A. Well, it was my responsibility to ensure that</p> <p>22 we had a process set up to identify all the bills that</p> <p>23 would require submission, to assign them, and then make</p> <p>24 sure they were done timely.</p> <p>25 Q. Did you have any other responsibilities in</p>



<p style="text-align: center;">17</p> <p>1 addition to testifying in Section 5 submissions in your</p> <p>2 role as legal director?</p> <p>3 A. Yeah. I mean, the Legal section provided legal</p> <p>4 advice to all divisions, so, you know, distributing</p> <p>5 election funds. The division distributed state funds.</p> <p>6 Then later on, we distributed federal funds. Voter</p> <p>7 registration issues. Primary finance issues. Basically</p> <p>8 providing legal advice for all the different divisions</p> <p>9 within the sections within the Elections Division.</p> <p>10 Q. And what are the other sections within the</p> <p>11 Elections Division?</p> <p>12 A. They were voter registration, special projects,</p> <p>13 which I guess would include voter education, election</p> <p>14 night returns, canvassing, election administration,</p> <p>15 designing forms, election inspectors, sending out</p> <p>16 election inspectors to the field, and then the election</p> <p>17 funds management section, which is sending out state</p> <p>18 funds to local election officials.</p> <p>19 Q. And what percentage of your time as legal</p> <p>20 director, while you were legal director, was spent on</p> <p>21 Section 5 submissions?</p> <p>22 A. Well, you know, it totally followed the pattern</p> <p>23 of legislation, so in an odd-numbered year, the summer</p> <p>24 months, would be heavy, and it usually would, you know,</p> <p>25 dribble into the fall as well.</p>	<p style="text-align: center;">19</p> <p>1 our director of election administration another quarter</p> <p>2 of the time. Something like that.</p> <p>3 Q. Who was the election director at that time?</p> <p>4 A. Tom Harrison.</p> <p>5 Q. Did you, in that capacity as legal director,</p> <p>6 also development legislative priorities for the</p> <p>7 Division?</p> <p>8 A. No. Now, depending on the Secretary of State</p> <p>9 in office, sometimes certain Secretaries would ask for</p> <p>10 ideas, more from a policy point of view, and then the</p> <p>11 Secretary would vet that. That would be sort of one</p> <p>12 approach. Then also, the chair of the House Elections</p> <p>13 Committee would also contact us sometimes and say do you</p> <p>14 all have any clean-up legislation that you recommend?</p> <p>15 Anything we can do to make things work better. And so</p> <p>16 we would also develop the list of clean-up legislation.</p> <p>17 But as the legal director, that was channeled more</p> <p>18 through Tom Harrison, the director then.</p> <p>19 Q. Thank you.</p> <p>20 Was there a time that you were promoted</p> <p>21 from legal director to another position in the Division?</p> <p>22 A. Yes. In September of 1995, I was promoted to</p> <p>23 director of the Elections Division.</p> <p>24 Q. Could you describe, generally, those</p> <p>25 responsibilities?</p>
<p style="text-align: center;">18</p> <p>1 Q. Did you assist, as legal director, in</p> <p>2 developing election bills in state legislature?</p> <p>3 A. I wouldn't say we assisted, you know, because</p> <p>4 we are not a legislative body. But we would serve as a</p> <p>5 resource, so if questions came up. Generally, someone</p> <p>6 from our office would attend every House Elections</p> <p>7 Committee meeting as a resource, and then also for any</p> <p>8 election-related bills that would come up in Senate</p> <p>9 State Affairs, we would usually have a witness there to</p> <p>10 be available as a resource.</p> <p>11 Q. What was your role with regard to those</p> <p>12 activities?</p> <p>13 A. My role would be to make sure that we had</p> <p>14 somebody, either myself or somebody else, at one of</p> <p>15 those hearings.</p> <p>16 Q. Was it often you --</p> <p>17 A. Yes.</p> <p>18 Q. -- who attended? How often would you attend as</p> <p>19 opposed to a staff person?</p> <p>20 A. Well, now, I was only legal director for -- I</p> <p>21 was legal director from 1991 to 1995, so -- and it was</p> <p>22 1991 after the legislative session, so it was just two</p> <p>23 legislative sessions, '93 and '95. And so in that time,</p> <p>24 it was maybe me half of the time, our director of</p> <p>25 elections maybe another quarter of the time, and then</p>	<p style="text-align: center;">20</p> <p>1 A. Those responsibilities were, you know,</p> <p>2 basically being in charge of the entire division and</p> <p>3 making sure that all of the sections that I mentioned</p> <p>4 before were, you know, operating as they should.</p> <p>5 The big change, I guess, is that I had</p> <p>6 more direct contact with our executive staff, with the</p> <p>7 Secretary directly and Assistant Secretary general</p> <p>8 counsel.</p> <p>9 Q. Who did you report to directly in that</p> <p>10 position?</p> <p>11 A. There would be changes through different</p> <p>12 administrations. Every administration has a different</p> <p>13 style. Generally, I would report to the Secretary and</p> <p>14 the Assistant Secretary.</p> <p>15 Q. How many staff people did you have under you?</p> <p>16 A. Between, you know, through the years, probably</p> <p>17 between 30 and 38.</p> <p>18 Q. And did your role include preparing submissions</p> <p>19 under Section 5 of the Voting Rights Act?</p> <p>20 A. Yes. I mean, I oversaw that process. Again,</p> <p>21 they originated through the Legal Division, but</p> <p>22 ultimately, they came through me, and I would read them</p> <p>23 and sign them.</p> <p>24 Q. Did you review every single one that was</p> <p>25 submitted to the Justice Department?</p>





<p style="text-align: center;">21</p> <p>1 A. If I signed it, I did. I was out on maternity 2 leave a couple of times, things like that. But overall, 3 most of them, I did.</p> <p>4 Q. Could you describe your other responsibilities, 5 besides advising the Division, supervising staff, 6 reviewing Section 5 submissions, as Election Division 7 director.</p> <p>8 A. I monitored legislation closely. You know, I 9 had various folks tracking bills and writing up bill 10 analyses. I would read those. Again, I was sort of the 11 point of contact for legislative matters, as far as 12 being a witness at committee hearings.</p> <p>13 I would be the point of contact on any 14 election-related litigation. I work closely with our 15 Legal Division to prepare memoranda to counties 16 instructing on new laws, and then also was responsible 17 for coordinating any -- for instance, if a law passed 18 that gave the Secretary of State new duties or we had to 19 adopt a rule, I would be in charge of kind of 20 coordinating that effort.</p> <p>21 Q. Thank you. So you develop legislative 22 priorities for the Election Division?</p> <p>23 A. No. I mean -- you know, as I said before, we 24 didn't -- we're not a legislative body, so if we were 25 asked, we would provide a list of clean-up legislation.</p>	<p style="text-align: center;">23</p> <p>1 guidance or thoughts on policy, did you consult with any 2 other offices or branches of the Executive Branch in 3 developing policy thoughts on election law?</p> <p>4 A. The Legislature didn't usually the contact us 5 directly on policy issues.</p> <p>6 Q. But if the Secretary of State was developing a 7 legislative agenda and sought your input, would you, in 8 turn, for example, seek suggestion or guidance from the 9 Governor's Office?</p> <p>10 A. No.</p> <p>11 Q. Or would you seek any suggestion or guidance 12 from the Lieutenant Governor's office?</p> <p>13 A. No.</p> <p>14 Q. Were there times when any of the technical 15 corrections that the Elections Division wanted to 16 advance with the Legislature would conflict with 17 legislation that the Secretary of State wanted to 18 advance?</p> <p>19 A. No.</p> <p>20 Q. Were the interests usually aligned?</p> <p>21 A. It was very -- and it hasn't happened 22 recently. It was fairly rare for a Secretary of State 23 to be, sort of, proactive on the policy side.</p> <p>24 Q. When did that last happen?</p> <p>25 A. I think it was Tony Garza in -- which was -- he</p>
<p style="text-align: center;">22</p> <p>1 If the Secretary of State asked for advice on possible 2 policy, which didn't happen very much, but then we could 3 give the Secretary of State ideas on policy changes.</p> <p>4 Q. Was the Secretary of State the entity that 5 promoted an affirmative legislative agenda regarding 6 election bills with the Legislature?</p> <p>7 A. Yes, but that depended on the Secretary and 8 whether they wanted to or not.</p> <p>9 Q. Would you support the Secretary of State in 10 creating that legislative agenda if did it occur?</p> <p>11 A. If they asked for our advice.</p> <p>12 Q. But otherwise, is it your testimony today that 13 the Election Division did not have an affirmative 14 legislative agenda?</p> <p>15 A. Correct. We don't.</p> <p>16 Q. And by clean-up legislation, you mean sort of 17 technical corrections --</p> <p>18 A. Yes.</p> <p>19 Q. -- to the election code are the types of things 20 you would provide --</p> <p>21 A. Right.</p> <p>22 Q. -- to the Legislature; is that correct?</p> <p>23 A. Correct. Correct.</p> <p>24 Q. Thank you. When it did occur that the 25 Secretary of State asked the Elections Division for</p>	<p style="text-align: center;">24</p> <p>1 left in '97.</p> <p>2 Q. And in your role as a director of the Elections 3 Division, were you ever called to testify before the 4 State Legislature?</p> <p>5 A. Yes.</p> <p>6 Q. Were you called as a resource witness?</p> <p>7 A. Yes.</p> <p>8 Q. Were you always called as a resource witness?</p> <p>9 A. Yes.</p> <p>10 Q. Did you ever come to the testify for or against 11 any legislation while you served?</p> <p>12 A. No. I always checked the "Resource Only" box.</p> <p>13 Q. What committees did you testify before in the 14 State Legislature?</p> <p>15 A. The House Elections Committee, Senate State 16 Affairs, and then occasionally another committee, like 17 the House Committee on Veterans Affairs. There may have 18 been another Senate committee, but that would be the 19 exception to the rule.</p> <p>20 Q. Was it ordinary, in your experience, for either 21 the House Elections Committee or the Senate State 22 Affairs Committee to, to not seek the Division's advice 23 or thoughts or input on election bills, or would they 24 ordinarily seek the advice of the Elections Division on 25 bills?</p>



<p style="text-align: center;">25</p> <p>1 A. Before they were filed?</p> <p>2 Q. Either before or during. Let's start with</p> <p>3 before.</p> <p>4 MR. MORTARA: I want to caution the</p> <p>5 witness not to disclose communications with any</p> <p>6 particular legislators. You can answer the question</p> <p>7 generally.</p> <p>8 MS. WESTFALL: Are you asserting a</p> <p>9 privilege in that regard, Mr. Mortara?</p> <p>10 MR. MORTARA: Legislative privilege.</p> <p>11 MS. WESTFALL: I believe the court ruled,</p> <p>12 on May 28th, that any communications that an agency has</p> <p>13 or information that is provided to a legislator is not</p> <p>14 privileged. Are we in disagreement with that?</p> <p>15 MR. MORTARA: The information is not</p> <p>16 privileged. Who it was provided to, when it was</p> <p>17 provided, and what information was provided to what</p> <p>18 legislator is.</p> <p>19 MS. WESTFALL: I strongly -- I take strong</p> <p>20 issue with that and disagree. And there are many</p> <p>21 rulings, which I have before me, in which the court has</p> <p>22 indicated and ordered Texas to allow the United States</p> <p>23 to examine witnesses to create -- on foundational</p> <p>24 questions and to create a privilege log, so...</p> <p>25 MR. MORTARA: I'm not changing my</p>	<p style="text-align: center;">27</p> <p>1 but generally not.</p> <p>2 Q. (By Ms. Westfall) Do you remember any of the</p> <p>3 exceptions in which they contacted the Division before</p> <p>4 filing an election bill?</p> <p>5 MR. MORTARA: You can answer this question</p> <p>6 with the subject matter of the bill or the specific</p> <p>7 bill, if you recollect a specific bill, but no more.</p> <p>8 A. I'm trying to remember. They were usually</p> <p>9 small, technical bills, and I'm trying to think. One</p> <p>10 that I can recall related to when the early voting</p> <p>11 ballot board could convene, and there was a desire to</p> <p>12 let them start earlier so that they could get their work</p> <p>13 done before election day.</p> <p>14 Q. (By Ms. Westfall) Why did they contact you in</p> <p>15 that instance before they filed?</p> <p>16 A. I think that the sponsor was trying to make</p> <p>17 sure that it didn't conflict with any other laws in the</p> <p>18 election code and the timings.</p> <p>19 Q. When did that occur?</p> <p>20 A. That was probably maybe five or seven years</p> <p>21 ago. Generally, not.</p> <p>22 Q. And was it your experience that when an</p> <p>23 election bill was filed, that the sponsor of the</p> <p>24 committee usually contacted the Division to seek</p> <p>25 guidance or input on the bill?</p>
<p style="text-align: center;">26</p> <p>1 instruction. You can answer the question generally. Do</p> <p>2 not answer it with respect to specific legislators.</p> <p>3 And with me, a list of legislators of</p> <p>4 Texas we believe have waived legislative privilege, and</p> <p>5 if you want, we can mark it, and she can answer the</p> <p>6 question with respect to those that have waived.</p> <p>7 MS. WESTFALL: We may have to -- I will</p> <p>8 consider whether we're going to have -- we're going to</p> <p>9 keep going for now on the record and do an examination.</p> <p>10 We may need to suspend this and call the</p> <p>11 court, because I have in front of me a bunch of orders</p> <p>12 allowing me to ask foundational questions. And I think</p> <p>13 -- I would ask that you reconsider your instruction to</p> <p>14 your witness. Is there a response, Mr. Mortara?</p> <p>15 MR. MORTARA: No.</p> <p>16 THE WITNESS: Can you restate the</p> <p>17 question, please?</p> <p>18 MS. WESTFALL: Why don't we have the court</p> <p>19 reporter read back, please, since we had an extensive</p> <p>20 colloquy.</p> <p>21 (Requested portion read back by the court</p> <p>22 reporter.)</p> <p>23 A. Generally, not before. Generally, bills were</p> <p>24 filed and nobody would, you know, run them through our</p> <p>25 office. There are probably a few exceptions to that,</p>	<p style="text-align: center;">28</p> <p>1 MR. MORTARA: You can answer that question</p> <p>2 yes or no.</p> <p>3 A. No. Generally, no.</p> <p>4 MS. WESTFALL: Mr. Mortara, are you going</p> <p>5 to be instructing the witness on how to answer my</p> <p>6 questions moving forward, because that is not a</p> <p>7 privilege issue. You're directing her --</p> <p>8 MR. MORTARA: It is a privilege issue.</p> <p>9 MS. WESTFALL: You're directing her to</p> <p>10 answer yes or no, and I'm asking: Are you interfering</p> <p>11 with my examination today, because I'm going to make my</p> <p>12 record on this issue.</p> <p>13 MR. MORTARA: It's a privilege issue,</p> <p>14 Ms. Westfall.</p> <p>15 MS. WESTFALL: Then assert the privilege.</p> <p>16 Then assert the privilege. Go ahead and make a speech.</p> <p>17 MR. MORTARA: You can answer that question</p> <p>18 yes or no because of legislative privilege.</p> <p>19 MS. WESTFALL: It's answered, so let me go</p> <p>20 on to my next question.</p> <p>21 Q. (By Ms. Westfall) Do you have an attorney-</p> <p>22 client relationship with anyone in the government, while</p> <p>23 you were employed with the Division?</p> <p>24 A. Yes. When I was at the Elections Division, I</p> <p>25 was -- well, while I was director of the Legal Section,</p>



<p style="text-align: center;">29</p> <p>1 I think I had the attorney-client privilege. As</p> <p>2 director of the Elections Division, my legal advice to</p> <p>3 the Secretary and the Executive Division would be</p> <p>4 considered privileged.</p> <p>5 Q. And who exactly were your clients? You said</p> <p>6 the Secretary of State, and anyone else?</p> <p>7 A. Secretary of State, Deputy Secretary of State</p> <p>8 or assistant. That title has changed through the years,</p> <p>9 but the number two person. General counsel. That's</p> <p>10 sort of the general folks in our Executive Division.</p> <p>11 Q. And did this relationship cover all --</p> <p>12 A. Communications director, I guess, too. Sorry.</p> <p>13 Q. The communications director was also a client?</p> <p>14 A. I would -- I would think that -- sometimes they</p> <p>15 would all be together in a meeting, so I would think</p> <p>16 they would -- my conversations would be privileged as</p> <p>17 well.</p> <p>18 Q. Were you an attorney -- or did you have that</p> <p>19 relationship in all aspects of your employment and</p> <p>20 interactions with the Secretary of State, Deputy</p> <p>21 Secretary of State, general counsel, or were there</p> <p>22 certain aspects of your relationship and</p> <p>23 responsibilities for those individuals that were not</p> <p>24 attorney-client protected communications, in your view?</p> <p>25 A. Sometimes, it's to hard to draw that line, but</p>	<p style="text-align: center;">31</p> <p>1 the Elections Division?</p> <p>2 A. Yes.</p> <p>3 Q. When was that?</p> <p>4 A. That was in November of 2011, last November.</p> <p>5 Q. What prompted that decision?</p> <p>6 A. I was offered another job at the Texas County</p> <p>7 District Retirement System.</p> <p>8 Q. Did you play any role in selecting your</p> <p>9 successor as the head of the Division?</p> <p>10 A. No.</p> <p>11 Q. And what is your title now at the retirement</p> <p>12 system?</p> <p>13 A. I'm Assistant General Counsel.</p> <p>14 Q. Is that a state agency?</p> <p>15 A. They're not a state agency. They're a</p> <p>16 governmental body created by the State Legislature. I'm</p> <p>17 still figuring out what rules they fall under.</p> <p>18 Q. What are your responsibilities as assistant</p> <p>19 general counsel?</p> <p>20 A. I'm responsible for providing general legal</p> <p>21 advice on, really, all matters affecting the system,</p> <p>22 including administration of the benefits, open records</p> <p>23 issues, open meetings issues, personnel issues, getting</p> <p>24 into federal tax issues, because we're very much</p> <p>25 regulated by the Internal Revenue Code.</p>
<p style="text-align: center;">30</p> <p>1 obviously, a lot of what I did was administrative as</p> <p>2 well, so...</p> <p>3 Q. And how did you differentiate between the times</p> <p>4 when you were providing attorney-client advice to those</p> <p>5 individuals and when you were not, in your mind?</p> <p>6 A. I don't know that I actually made a conscious</p> <p>7 decision at the time, you know.</p> <p>8 Q. Did you have an attorney-client relationship</p> <p>9 with state legislators?</p> <p>10 A. I don't think so.</p> <p>11 Q. Did you --</p> <p>12 A. I'm not a litigation attorney, so...</p> <p>13 Q. Did you have an attorney-client relationship</p> <p>14 with county election officials?</p> <p>15 A. No.</p> <p>16 Q. Did you have an attorney-client relationship</p> <p>17 with the Department of Public Safety?</p> <p>18 A. No.</p> <p>19 Q. Did you have an attorney-client relationship</p> <p>20 with the Governor's office?</p> <p>21 A. I don't think so.</p> <p>22 Q. You have an attorney-client relationship with</p> <p>23 the Lieutenant Governor's Office?</p> <p>24 A. No.</p> <p>25 Q. Is there a time when you stopped working for</p>	<p style="text-align: center;">32</p> <p>1 Q. How many staff do you have?</p> <p>2 A. I don't oversee any staff.</p> <p>3 Q. Who do you report to?</p> <p>4 A. I report to Tom Harrison, who is the general</p> <p>5 counsel there.</p> <p>6 Q. And why did you take this position?</p> <p>7 A. It was -- it was a good opportunity. Tom</p> <p>8 Harrison contacted me. He is looking to retire, and he</p> <p>9 contacted me and it would be -- it was a real good fit,</p> <p>10 so it was a good opportunity.</p> <p>11 Q. Do you remain in contact with the Elections</p> <p>12 Division?</p> <p>13 A. Occasionally. I sent them a note, to a few</p> <p>14 folks to wish them well on Tuesday, but nothing major.</p> <p>15 Q. Are you -- who in touch -- who are you in touch</p> <p>16 with at the Division still?</p> <p>17 A. I occasionally talk to Elizabeth Winn, who's</p> <p>18 the legal director, not very much. Melanie Best, who's</p> <p>19 a staff attorney. Melanie Best, B-e-s-t. Dan Glotzer.</p> <p>20 I speak with the secretary from time to time, Hope</p> <p>21 Andrade, and then several folks -- that -- that's</p> <p>22 probably about it.</p> <p>23 Q. Are you asserting any privileges today?</p> <p>24 A. I am asserting privileges on any legal advice I</p> <p>25 may have given the Secretary or the Secretary executive</p>





<p style="text-align: center;">33</p> <p>1 staff, and then any legislative privileges that members</p> <p>2 of the Legislature have asserted, I follow those.</p> <p>3 Q. When did you first start -- strike that.</p> <p>4 When did you first discuss asserting</p> <p>5 privileges in this litigation?</p> <p>6 MR. MORTARA: Don't answer that question.</p> <p>7 Attorney-client privilege.</p> <p>8 MS. WESTFALL: When?</p> <p>9 MR. MORTARA: Yeah, because it presumes</p> <p>10 that she discussed it.</p> <p>11 Q. (By Ms. Westfall) Did you discuss asserting</p> <p>12 privileges in this litigation?</p> <p>13 MR. MORTARA: Don't answer that question.</p> <p>14 Attorney-client privilege.</p> <p>15 Q. (By Ms. Westfall) Are you asserting attorney-</p> <p>16 client privilege with anyone other than the Secretary of</p> <p>17 State, the Assistant Secretary of State, the general</p> <p>18 counsel? Is that the full list?</p> <p>19 A. I believe so.</p> <p>20 MR. MORTARA: For the witness's benefit,</p> <p>21 the Office the Attorney General is representing you for</p> <p>22 purposes of this case, and you have an attorney-client</p> <p>23 relationship with the Office of Attorney General.</p> <p>24 MS. WESTFALL: Could you please mark this</p> <p>25 as U.S. 280.</p>	<p style="text-align: center;">35</p> <p>1 pages, and just ask you a few questions about it.</p> <p>2 Turning your attention to Page 298, which</p> <p>3 is three pages in of Exhibit 280, do you see at the top</p> <p>4 of the page, the second entry down, it indicates a</p> <p>5 communication when Ms. Elizabeth Winn and Skipper</p> <p>6 Wallace?</p> <p>7 A. Uh-huh, yes.</p> <p>8 Q. And do you see that it indicates basis for</p> <p>9 withholding attorney-client privilege?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Skipper Wallace?</p> <p>12 A. Skipper Wallace is the -- at one time, he was</p> <p>13 the legislative coordinator for the state Republican</p> <p>14 Party, and he's also a county chair.</p> <p>15 Q. And to your knowledge, does he have an</p> <p>16 attorney-client relationship with Ms. Winn?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. And turning to your attention to the bottom of</p> <p>19 the page, the last entry, Texas 00019424. Do you see</p> <p>20 that entry?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see that you are listed as the</p> <p>23 author of that document?</p> <p>24 A. Yes.</p> <p>25 Q. Do you remember this document?</p>
<p style="text-align: center;">34</p> <p>1 (Exhibit 280 marked for identification)</p> <p>2 Q. (By Ms. Westfall) You have been handed what's</p> <p>3 been marked U.S. 280.</p> <p>4 We, unfortunately, only have one copy for</p> <p>5 the Defendant Intervenors, or two? Great. Thank you.</p> <p>6 Do you recognize this?</p> <p>7 A. No.</p> <p>8 Q. I will assert to you -- and I'm sure your</p> <p>9 counsel will not disagree -- that this is the privilege</p> <p>10 log that has been produced in this litigation, and it is</p> <p>11 an excerpt of several copies -- several pages pertaining</p> <p>12 to the Secretary of State's privilege log that was</p> <p>13 produced on May 11th, by the State of Texas.</p> <p>14 MR. MORTARA: Elizabeth, just for the</p> <p>15 record, is this the most recent one? I know they've</p> <p>16 been --</p> <p>17 MS. WESTFALL: No, it's not. No, it's</p> <p>18 not. It's --</p> <p>19 MR. MORTARA: Do you know if the most</p> <p>20 recent one has changed the entries you're about to</p> <p>21 discuss with Ms. McGeehan?</p> <p>22 MS. WESTFALL: No, it has not. There have</p> <p>23 been -- they've been produced the seriatim.</p> <p>24 Q. (By Ms. Westfall) So this is selected pages,</p> <p>25 and I'm going to direct your attention to some of the</p>	<p style="text-align: center;">36</p> <p>1 A. No, not -- I don't know which it would be.</p> <p>2 Q. Could you tell me who Matt Creel is?</p> <p>3 A. Matt Creel, he's a legislative staffer for</p> <p>4 Representative Van Taylor.</p> <p>5 Q. And who was John Sepehri?</p> <p>6 A. John Sepehri was our general counsel -- was the</p> <p>7 Secretary of State general counsel for several years.</p> <p>8 Q. Turning your attention to the next page, 299,</p> <p>9 in Exhibit 290, do you see the first entry, Texas</p> <p>10 00019425?</p> <p>11 A. Yes.</p> <p>12 Q. And do you see it lists you as the author?</p> <p>13 A. Yes.</p> <p>14 Q. And Secretary of State Wilson; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Was this also sent to anyone in the Department</p> <p>17 of Public Safety?</p> <p>18 A. I'll not recollecting what this is. Internal</p> <p>19 DPS memo to Secretary of State, from SOS attorney</p> <p>20 regarding voter registration file maintenance. I'm</p> <p>21 sorry. What was your question?</p> <p>22 Q. Do you recall whether this was sent to the</p> <p>23 Department of Public Safety? They're a recipient, or</p> <p>24 were they copied or --</p> <p>25 A. I don't think so, but I'm not entirely sure</p>



<p style="text-align: center;">37</p> <p>1 what it is. But if it's what I think it is, it was not 2 sent to DPS. 3 Q. Thank you. And two entries down at Texas 4 00019433, do you see that entry? 5 A. Yes. 6 Q. And do you see it's a communication from you to 7 the voter registrars, elections administrators and 8 county clerks? 9 A. Yes. 10 Q. And I believe it was your testimony earlier 11 that you do not have an attorney-client relationship 12 with any of those individuals; is that correct? 13 A. That's my understanding. 14 Q. Turning your attention to Page 419 of 15 Exhibit 280, which a few pages in. Do you see the top 16 entry at Texas 00030611? 17 A. Yes. 18 Q. And do you see you are the author of a document 19 that went to Kathleen Murphy and others? 20 A. Yes. 21 Q. Who is Kathleen Murphy? 22 A. She's an attorney at DPS. 23 Q. Who is Phillip Adkins? 24 A. He's the general counsel at DPS. 25 Q. And who is Duncan Fox?</p>	<p style="text-align: center;">39</p> <p>1 Q. I will assert to you that it is a supplemented 2 privilege log submitted that was produced in this 3 litigation the State of Texas on May 21st, pertaining to 4 e-mail. 5 Could I direct your attention to -- and 6 it's excerpted a number of pages. But could I turn your 7 attention to the second page of Exhibit 281, which is 8 page 25 of the log. And if you look at the last entry 9 at Texas 00078190, do you see that? 10 A. Yes. 11 Q. Do you see that it lists you as the author of a 12 document? 13 A. Yes. 14 Q. Do you remember this document? 15 A. No. 16 Q. Who was Steve Schar? 17 A. He was the clerk of the House Elections 18 Committee. 19 Q. Did he work for Mr. Bonnen? 20 A. In 2009, he did not. He was -- he worked for 21 Chairman Smith. 22 Q. And is it your understanding that you do not 23 have an attorney-client relationship with Mr. Schar? 24 A. Right. But I would with John Sepehri. Yeah. 25 Q. Turning your attention to Page 387 of this</p>
<p style="text-align: center;">38</p> <p>1 A. He's an attorney at DPS. 2 Q. And likewise, is it your understanding that you 3 do not have an attorney-client relationship with these 4 individuals at DPS? 5 A. I don't think so. 6 Q. Turning your attention to Page 465 of this 7 document, do you see two entries down at Texas 00039547? 8 A. Yes. 9 Q. There is another document in which you were 10 listed as the author to the same individuals at DPS? 11 A. Yes. 12 Q. And likewise, is it your understanding that you 13 do not have an attorney-client relationship with 14 individuals at DPS as to this document? 15 A. That's my understanding. 16 Q. Thank you. 17 A. But to be honest, I don't know if they can 18 assert that as -- but anyway, that's my understanding. 19 Q. Thank you for your testimony. 20 MS. WESTFALL: Could you mark this as 21 Exhibit U.S. 281. 22 (Exhibit 281 marked for identification.) 23 Q. (By Mr. Sells) You have been handed what's been 24 marked U.S. 281. Do you recognize this document? 25 A. No.</p>	<p style="text-align: center;">40</p> <p>1 document, the second entry down, do you see Texas 2 00092554? 3 A. Yes. 4 Q. Who is Amber Hausenfluck? 5 A. She is a legislative staffer for Senator Van de 6 Putte. 7 Q. And Senator Van de Putte was an opponent of 8 Senate Bill 14; is that correct? 9 A. I think so. 10 Q. Turning your attention to Page 419 of Exhibit 11 281, two up from the bottom, do you see Texas 00097288? 12 A. Yes. 13 Q. And do you see it does not list an author? 14 A. Yes. 15 Q. Do you recall seeing this document? Are you 16 familiar with this document based on the description 17 here in this log? 18 A. Correspondence from Secretary of State Andrade 19 and Deputy Shorter to legislators regarding voter ID 20 questions. I am not sure. I mean, I am not sure, 21 because I don't know what date -- I'm not sure what that 22 would be. 23 Q. Thank you. Turning your attention to Page 540 24 of this document, do you see Texas 00107677? 25 A. Yes.</p>



<p style="text-align: center;">41</p> <p>1 Q. Could you take a look at this entry and let me</p> <p>2 know when you've read the description.</p> <p>3 A. (Reading documents.) Okay. I've looked at it.</p> <p>4 Q. Do you recall which legislators made this</p> <p>5 request?</p> <p>6 MR. MORTARA: Just one second. You may</p> <p>7 answer that question if the legislator's name appears on</p> <p>8 this list that I am handing you of legislators that have</p> <p>9 waived legislative privilege. And you may not answer</p> <p>10 that question if the legislator's name does not appear</p> <p>11 on that list. And the basis is legislative privilege.</p> <p>12 A. And your question was who --</p> <p>13 MR. MORTARA: Actually, withdrawn. You</p> <p>14 may answer that question. You may answer that question.</p> <p>15 You may answer that question irrespective of the</p> <p>16 legislator. And I withdraw the objection. I'm sorry,</p> <p>17 Ms. McGeehan.</p> <p>18 THE WITNESS: Okay.</p> <p>19 A. My recollection is that -- and your question is</p> <p>20 what? I'm sorry.</p> <p>21 Q. (By Mr. Sells) Which legislator requested</p> <p>22 advice referenced in this entry?</p> <p>23 A. Okay. My recollection was that this came out</p> <p>24 of a question that was asked during the Senate hearing</p> <p>25 on Senate Bill 14, and I think it was Senator Williams.</p>	<p style="text-align: center;">43</p> <p>1 that these individuals have waived? Have they invoked</p> <p>2 privilege? What are you asserting this list is?</p> <p>3 MR. MORTARA: Waived. These are the</p> <p>4 individuals that have waived privilege.</p> <p>5 MS. WESTFALL: And is it your position</p> <p>6 that you need not affirmatively invoke privilege with</p> <p>7 regard to legislative privilege?</p> <p>8 MR. MORTARA: It is the legislator's</p> <p>9 privilege to waive; and therefore, if the State of Texas</p> <p>10 is not aware that the legislator has waived privilege,</p> <p>11 then Ms. McGeehan cannot waive it for the legislator,</p> <p>12 and I will instruct her not to answer.</p> <p>13 If counsel, anybody, has information that</p> <p>14 another legislator has waived privilege and can produce</p> <p>15 that in writing, we can add that legislator's name to</p> <p>16 the list. We, by no means, necessarily think the list</p> <p>17 is exhaustive with respect to all legislators' intent.</p> <p>18 This is what we could confirm in writing.</p> <p>19 MS. WESTFALL: All right. We'll discuss</p> <p>20 that at a break, Mr. Mortara.</p> <p>21 Q. (By Ms. Westfall) Ms. McGeehan, are you</p> <p>22 familiar with Section 5 of the Voting Rights Act?</p> <p>23 A. Yes.</p> <p>24 Q. What is your understanding of Section 5's</p> <p>25 requirements?</p>
<p style="text-align: center;">42</p> <p>1 It might have been Senator Fraser. But one of the two</p> <p>2 of them asked the question.</p> <p>3 Q. Thank you.</p> <p>4 MS. WESTFALL: Mr. Mortara, what is that</p> <p>5 document that you handed the witness?</p> <p>6 MR. MORTARA: If you want to mark it, we</p> <p>7 can. It is our best efforts to assemble a list of</p> <p>8 legislators that have waived privilege.</p> <p>9 MS. WESTFALL: Okay. No, I don't want to</p> <p>10 mark it.</p> <p>11 MR. MORTARA: For the purposes of giving</p> <p>12 Ms. McGeehan a guide, when you ask questions did a --</p> <p>13 for instance, if you ask a question, did a legislator</p> <p>14 ask you how many voters lacked identification, she can</p> <p>15 answer that question with respect to some and not</p> <p>16 others, and this is our best effort to get that</p> <p>17 information into an easy way, versus me repeating a long</p> <p>18 objection. So for purposes of the record, I'll just</p> <p>19 read the list into the record and take one minute.</p> <p>20 Alvarado, Anchia, Chisum, Davis, Dukes,</p> <p>21 Dutton, Eiland, Ellis, Gallego, Harper-Brown, Hartnett,</p> <p>22 Hinojosa, Hochberg, Lucio, Martinez, Martinez-Fischer,</p> <p>23 Naishtat, Strama, Turner, Van de Putte, Veasey, Vo,</p> <p>24 Walle, West, Zaffirini.</p> <p>25 MS. WESTFALL: Is it your understanding</p>	<p style="text-align: center;">44</p> <p>1 A. That any change impacting voting needs to be</p> <p>2 precleared by the Justice Department or precleared by</p> <p>3 the District Court in Columbia before it can be</p> <p>4 implemented in Texas.</p> <p>5 Q. What is your understanding of the legal</p> <p>6 requirement involved in preclearance? What's the</p> <p>7 standard?</p> <p>8 A. That the state has to show that it's not going</p> <p>9 to have a disparate impact on minority voters.</p> <p>10 Q. Is there any other requirement under Section 5?</p> <p>11 A. I believe also that there was no intent to</p> <p>12 discriminate against minority voters.</p> <p>13 Q. Could you tell me what type of voting changes</p> <p>14 Section 5 applies to?</p> <p>15 A. Just everything.</p> <p>16 Q. It certainly applies to more voting changes</p> <p>17 than just redistricting; isn't that right?</p> <p>18 A. Yes.</p> <p>19 Q. And does the analysis of legislative purpose or</p> <p>20 intent differ based on the type of voting change, or is</p> <p>21 it the same legal standard that applies to all voting</p> <p>22 changes?</p> <p>23 A. I think it's the same legal standard for all</p> <p>24 changes.</p> <p>25 Q. And you testified earlier, when we were talking</p>



<p style="text-align: center;">45</p> <p>1 about your job history, that you prepared submissions</p> <p>2 and reviewed submissions that were sent to the U.S.</p> <p>3 Department of Justice; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. How many were you involved in, approximately,</p> <p>6 during the course of your employment with the Division?</p> <p>7 A. Hundreds and hundreds, you know. There's --</p> <p>8 usually, we would submit at least a hundred bills a</p> <p>9 session, so... You know, so how many sessions, you</p> <p>10 know. So probably about a thousand.</p> <p>11 Q. What types of information, as a general matter,</p> <p>12 did you submit with preclearance submissions?</p> <p>13 A. What general subjects?</p> <p>14 Q. What types of information did you submit in</p> <p>15 support of your submission, as a general matter?</p> <p>16 A. As a general matter, we would write up a</p> <p>17 description of the bill. We followed the Code of</p> <p>18 Federal Regulations, pretty well tried to track, you</p> <p>19 know, the required elements of the submission, tried to</p> <p>20 be responsive to those, and would generally supply, try</p> <p>21 a supply at least two minority contacts that could be</p> <p>22 contacted on the change.</p> <p>23 Q. Anything else as a general matter?</p> <p>24 A. As a general matter, no.</p> <p>25 Q. Were you ever involved with a Section 5</p>	<p style="text-align: center;">47</p> <p>1 client communications.</p> <p>2 A. Well, my role would be to coordinate the</p> <p>3 response, review it, and generally we would need to</p> <p>4 contact the sponsor to get some of the additional</p> <p>5 detail.</p> <p>6 Q. Were you ever involved in a Section 5</p> <p>7 submission that drew an objection from the Justice</p> <p>8 Department?</p> <p>9 A. Yes.</p> <p>10 Q. Which ones were those?</p> <p>11 A. In the '90s, there was an objection on the</p> <p>12 national -- our implementation of the National Voter</p> <p>13 Registration Act. It was later withdrawn. But there</p> <p>14 was an objection regarding having agency staff check the</p> <p>15 citizenship status of applicants before they could</p> <p>16 register. There was a -- I believe it was a water</p> <p>17 district bill that got an objection maybe in 2007.</p> <p>18 There may have been a couple of others.</p> <p>19 Q. With regard to the NVRA registration issue you</p> <p>20 just described, when that submission drew an objection,</p> <p>21 what actions did you take following that objection, or</p> <p>22 what additional information did you supply to the</p> <p>23 Justice Department, if any?</p> <p>24 A. After the objection?</p> <p>25 Q. Yes.</p>
<p style="text-align: center;">46</p> <p>1 submission that drew a request from the Attorney General</p> <p>2 for more information?</p> <p>3 A. Yes.</p> <p>4 Q. How many times did that happen?</p> <p>5 A. Maybe ten.</p> <p>6 Q. What types of voting changes were involved?</p> <p>7 A. There were some questions regarding to creation</p> <p>8 of district courts in the '90s. When we implemented the</p> <p>9 National Voter Registration Act, we got, I think, an</p> <p>10 additional information request on certain issues.</p> <p>11 Redistricting would usually generate that. And then</p> <p>12 recently, there was a water -- or I think it was a water</p> <p>13 district bill that generated an additional information</p> <p>14 request.</p> <p>15 Q. And could you speak generally as to what</p> <p>16 actions you would take upon receipt of a request for</p> <p>17 more information from the Justice Department?</p> <p>18 MR. MORTARA: Ms. McGeehan, you can answer</p> <p>19 the question generally, but remember, in some instances,</p> <p>20 you may have been acting within the scope of your role</p> <p>21 as an attorney. And so I admonish you to observe that</p> <p>22 there's an attorney-client privilege where you believe</p> <p>23 one to exist.</p> <p>24 Q. (By Ms. Westfall) Okay. And certainly, I'm not</p> <p>25 seeking any information that would touch upon attorney-</p>	<p style="text-align: center;">48</p> <p>1 A. I believe that the Secretary wrote a letter at</p> <p>2 that point. And I honestly don't recall the details of</p> <p>3 that. I may have been involved in that. That may be</p> <p>4 privileged, I don't know, but...</p> <p>5 Q. Are you familiar with the term Spanish surname</p> <p>6 analysis?</p> <p>7 A. Yes.</p> <p>8 Q. Could you define that for us.</p> <p>9 A. The Elections Division, I think, since the mid</p> <p>10 '80s, had used a list of Spanish surnames that we've</p> <p>11 obtained from the Census Department, and we run that</p> <p>12 against the list of -- statewide list of registered</p> <p>13 voters to identify Hispanic voters or voters with</p> <p>14 Hispanic surnames.</p> <p>15 Q. And are you familiar the omission commission</p> <p>16 corrective aspect of that analysis?</p> <p>17 A. I don't understand what you mean by that.</p> <p>18 Q. Is there any corrective analysis goes along</p> <p>19 with the Spanish surname analysis that you could testify</p> <p>20 about today?</p> <p>21 A. I still don't understand what you're asking.</p> <p>22 Q. Is there anything that accounts for someone who</p> <p>23 would -- false positives -- someone, for example, who</p> <p>24 would -- who would not be of Hispanic origin who married</p> <p>25 -- a woman who married someone who had a Hispanic last</p>



49

1 name, and actually that individual, that woman, for  
2 example, is not herself Hispanic? Would there be  
3 anything that would correct for falsely counting her as  
4 someone of Hispanic origin, notwithstanding that she  
5 wasn't Hispanic, that is involved in Spanish surname  
6 analysis?

7 A. That the Secretary of State's Office uses --

8 Q. Yes.

9 A. -- in addition to the Spanish surname? No. I  
10 mean, we use -- my recollection is, that we used the  
11 Spanish surname list due to an agreement with the  
12 Justice Department, that was entered into the mid '80s,  
13 regarding sending out notice of Constitutional  
14 amendment. So we are following the practice that's  
15 precleared.

16 Q. I see. How many times have you used a Spanish  
17 surname analysis in conjunction with -- or how many  
18 times did you in conjunction with submitting a voting  
19 change for preclearance?

20 A. We routinely used it to -- in describing the  
21 geographic area that was impacted, we would usually send  
22 voter registration data, including a breakdown of  
23 Hispanic surname as well.

24 Q. So if you had a hundred bills a session, how  
25 many would involve Spanish surname analysis?

50

1 A. Generally, only those bills that affected  
2 discreet portions of the state, we would provide that  
3 analysis on. But if it was a bill of statewide  
4 applicability, just a change in a law that affects  
5 everybody, we generally didn't supply any specific data  
6 on voter registration statistics.

7 Q. So you can never remember, sitting here today,  
8 a time, with a statewide change, where you did a Spanish  
9 surname analysis?

10 A. Redistricting is kind of a whole different  
11 animal, so not talking about redistricting, but just  
12 sort of a -- you know, like the bill I mentioned earlier  
13 to change the time period when the early ballot board  
14 could meet, we would submit that, and we would not  
15 provide any detailed analysis about the number of  
16 registered voters in the state or the number of Spanish  
17 surname voters.

18 Q. I see. But you just testified that it was  
19 routine that you use this analysis, correct?

20 A. Yeah, but depending on the submission. So if  
21 it's a -- I mean, probably half the bills that go up are  
22 a creation of a special district that comprise only a  
23 portion of the state. That would be the kind of bill  
24 that we would include voter registration detail.

25 Q. I see. But there's nothing that would prevent

51

1 you from doing it for statewide changes, is there?

2 A. No.

3 Q. Because you do it all the time, right?

4 A. Right. It's public information.

5 Q. And did you use it to comply with -- with state  
6 law for the staffing of precincts, for example? Did you  
7 do Spanish surname with regard to staffing of precincts  
8 with --

9 A. We did.

10 Q. -- Spanish-speaking poll workers?

11 A. Yes. We started to do that in maybe 2003, '4,  
12 something around -- around that time, whereas basically,  
13 just to help the county election officials identify  
14 those precincts that would need Spanish-speaking poll  
15 workers. We went ahead and shared the results of our  
16 Spanish surname list to help them identify precincts.

17 Q. Outside of Section 5, does the state also use  
18 Spanish surname analysis for other purposes?

19 A. You know, the primary purpose was for purposes  
20 of sending out the written notice for the constitutional  
21 amendment election. We did start to using it to help  
22 the counties identify Spanish surnames. It's available  
23 as a request, when someone requests information. So if  
24 somebody wants a copy of the voter registration  
25 database, they can request it with the Spanish surname

52

1 flag. I don't recall, at this point, any other time  
2 that the Secretary of State used that data for Spanish  
3 surname.

4 Q. Was it at all used for redistricting to advise  
5 a Hispanic legislator that they would be able to be  
6 elected in a new district?

7 MR. MORTARA: Ms. McGeehan, you can answer  
8 that question with respect to the --

9 Ms. Westfall, the problem I have with this  
10 question is, it incorporates within the question the  
11 positive advice that he would get elected or she would  
12 get elected. And then the additional problem is, we  
13 have waivers here for voter ID purposes, and I'm not  
14 sure we have waivers for other purposes.

15 And so I think the general question, did  
16 you ever give advice to a legislator about the  
17 likelihood of a Hispanic legislator getting elected is a  
18 yes or a no, because that's subject matter privilege  
19 log. Beyond that, I think I'd have to assert  
20 legislative privilege for everyone, because I'm not  
21 aware of waivers that go beyond voter ID. Do you --

22 MS. WESTFALL: Okay. You have a different  
23 conception of how legislative privilege works, because  
24 you're saying it has to be waived rather than invoked,  
25 so we are looking at privilege differently.





53

1 MR. MORTARA: Okay.

2 MS. WESTFALL: Secondly, you're  
3 anticipating a question I haven't asked, because I  
4 haven't asked the identity of any particular Hispanic  
5 legislator. I'm asking her as a general matter. So I'm  
6 not understanding your objection.

7 MR. MORTARA: Because your question  
8 incorporates the positive, which is, did you tell a  
9 Hispanic legislator he or she would could get elected,  
10 which is the positive, which would never appear on a  
11 privilege log. What would appear on a privilege log is  
12 the subject of communication about election prospects.

13 MS. WESTFALL: I'm not invading any  
14 privilege. I'm not following why, since there's no  
15 identity or no -- there's no individual. This is a  
16 general question that I'm posing, and I object to your  
17 instructing the witness to answer yes or no.

18 MR. MORTARA: I'm not instructing her.  
19 I'm saying you cannot answer the question the way it's  
20 been posed.

21 Q. (By Ms. Westfall) Is the Spanish surname  
22 analysis conducted within the Division, or is it  
23 conducted by a central data office?

24 A. It is conducted within -- not in the Elections  
25 Division, but in the IT department, information

54

1 technology department, of the Secretary of State's  
2 Office.

3 Q. What was your experience with the accuracy of  
4 surname analysis?

5 A. It was pretty mixed. We would get a lot of  
6 complaints from people who felt that -- again, the main  
7 purpose of it was sending out the notices for  
8 constitutional amendment elections. So sometimes folks  
9 would receive one of those and they didn't speak Spanish  
10 and they got mad, or sometimes they did speak Spanish  
11 and they got mad, because they didn't want to be  
12 profiled. So yes, we had some concerns that it may not  
13 be a hundred percent reliable. But that was our --  
14 those were basically the rules that we played by, as  
15 were precleared by the Justice Department.

16 Q. And was that -- concerns by constituents who  
17 erroneously received materials in Spanish or vice versa,  
18 was that the sum total of your concerns about the  
19 accuracy of the analysis?

20 A. Well, in that it represented that some people  
21 may be identified that don't speak Spanish or people who  
22 do speak Spanish are not included in that list, so it's  
23 not a perfect list of identifying Spanish-speaking  
24 voters.

25 Q. How many complaints, sitting here today, are

55

1 you aware of with regard to what you just testified to?

2 A. We would get many complaints. Maybe 50 or more  
3 after a mail-out.

4 Q. What --

5 A. Some of them were people complaining because  
6 they didn't think the state should be sending out mail-  
7 outs in Spanish. So just lots of different complaints.

8 Q. Okay. But just focusing on issues pertaining  
9 to the accuracy of the Spanish surname analysis, what --  
10 could you give a kind of a percentage of how many  
11 complaints you would get when you sent out one of these  
12 mailings that related to accuracy of the analysis?

13 A. You know, it's hard to answer that, because  
14 most of the complaints we got were sort of emotional  
15 reactions, so I don't know that they were -- really,  
16 those complaints weren't centered so much on the  
17 accuracy of the data.

18 Q. So it's your testimony that there were not  
19 complaints about the accuracy of the data, and that  
20 there were -- these were emotional responses related to  
21 a different issue?

22 A. I think the only complaints we ever got, and I  
23 don't know that we got them in writing, but sometimes we  
24 could would get feedback from county election officials  
25 that felt that the lists were not necessarily reflective

56

1 of Spanish-speaking communities, so that if they had to  
2 appoint a number of polling place officials, that they  
3 would express that didn't necessarily represent the  
4 community, and that that might not be the best way of  
5 identifying where to appoint Spanish-speaking clerks.

6 Q. So other than what you've just testified to, is  
7 there -- is there any other facts that you can testify  
8 to about concerns with the accuracy of the analysis, or  
9 was it kind of anecdotal complaints?

10 A. Yeah. I mean, we -- those were the complaints  
11 we got. Let's put it that way.

12 Q. And based on your experience in the Division,  
13 you don't have any fundamental concerns about the  
14 accuracy of the analysis; is that right?

15 A. Well, we're not data specialists. I mean, we  
16 are implementers, and we follow the law. So that's what  
17 we did. It really...

18 Q. Based on your administration experience, did  
19 you believe it was, on the whole, accurate?

20 A. It was my thought that it was probably the best  
21 way we had of identifying Spanish-speaking folks, but I  
22 knew it wasn't perfect.

23 Q. Thank you. And I believe you testified earlier  
24 that as part of your responsibilities when you were at  
25 the Division, you worked with legislators and staff to



57

1 provide them with advice pertaining to election laws,  
2 right?

3 A. Uh-huh, yes.

4 Q. Did you serve as a resource to the Legislature  
5 in the development of election bills, other than what  
6 you have testified to earlier?

7 A. Not so much in the development of the bill, but  
8 after the bill was filed and if it was going to be heard  
9 in a committee, that's where we would generally step in  
10 and offer advice.

11 Q. When it was heard in committee, what types of  
12 information did the Division provide to either the  
13 committee or individual legislators?

14 A. Usually, it was just an explanation of how it  
15 worked within the framework of existing election law.

16 Q. Would you describe that as technical advice?

17 A. For the most part, technical advice.

18 Q. Was there any other advice you provided besides  
19 technical advice?

20 A. No. I mean, generally we did not provide  
21 policy advice. That was not what we would do.

22 Q. But besides technical advice as to how a bill  
23 would work relative to the election law, did you talk  
24 about -- or did you provide advice on how it could be --  
25 how it would actually be implemented if enacted?

58

1 A. Yes. They would ask us questions like that.

2 Q. Are there any other categories of advice,  
3 besides how a bill would be, how a law -- a bill, if  
4 enacted, would be implemented and how it sort of fit in  
5 the election code that you would provide to committees  
6 or legislators?

7 A. Sometimes they might ask for data, and we would  
8 supply data, you know, Hispanic surname voters or other  
9 information that we might collect at the Secretary of  
10 State's Office. You know, kinds of voting systems used,  
11 things like that. So we also would provide just raw  
12 data that we had.

13 Q. Anything else you can think of sitting here  
14 today?

15 A. I think that -- that covers it.

16 Q. And with regard to bills subject to Section 5,  
17 does the Legislature, in your experience, take any  
18 special steps, as a general matter, to ensure that an  
19 election bill will be precleared by the Justice  
20 Department or by a court?

21 MR. MORTARA: You can answer if you know,  
22 and if the -- you can answer if you know and if  
23 answering would not disclose the content of any  
24 communications with any legislator that is not on that  
25 list. Do you understand?

59

1 THE WITNESS: Uh-huh.

2 MS. WESTFALL: I'm asking her as a general  
3 matter, not as pertaining to any particular legislator,  
4 Mr. Mortara.

5 A. My experience that is most legislators  
6 understand the mandate of Section 5 and keep that in  
7 mind when they propose legislation, and know that's part  
8 the process.

9 Q. (By Ms. Westfall) How do you know that?

10 A. Well, for -- I mean, for the time I worked  
11 there, the Secretary of State's Office routinely  
12 contacted sponsors, after a bill passed, seeking  
13 assistance in locating minority contacts. So for one  
14 thing, for 20-plus years, our office has always  
15 solicited that information, so...

16 Q. Outside of the minority contact issue, would  
17 legislators generally do anything in crafting their  
18 legislation to ensure that it would meet the two legal  
19 prongs that you just testified about earlier pertaining  
20 to Section 5?

21 MR. MORTARA: Objection, foundation.

22 THE WITNESS: Sorry, you're objecting?

23 MR. MORTARA: You may answer the  
24 question.

25 THE WITNESS: Oh, okay.

60

1 A. I mean, I don't -- I don't really know what the  
2 legislative process is. I mean, I presume they're aware  
3 of the law. I don't know what the detailed -- we didn't  
4 work on drafting bills.

5 Q. (By Ms. Westfall) Do you know whether, as a  
6 general matter, legislators would conduct any factual  
7 analysis to ensure that there would not be retrogressive  
8 effect on minority voters when they were drafting bills?

9 A. I don't know.

10 Q. Do you know whether legislators would take any  
11 steps to ensure that there was no discriminatory purpose  
12 in crafting election laws?

13 A. I don't know.

14 Q. And with regard to voting changes subject to  
15 Section 5 that are administrative in nature, did the  
16 Division take any steps, as a general matter, to ensure  
17 that rules, regulations, other procedures that the  
18 Division created would comply with Section 5?

19 A. Yes. I mean, yeah.

20 Q. Can you describe what procedures you would take  
21 to accomplish that?

22 A. I don't know that we had any procedures per se,  
23 but I think it -- you know, we worked intimately with  
24 Section 5, and so that would be part of our analysis,  
25 and anything we did -- anything relating to voting, that



<p style="text-align: center;">61</p> <p>1 would be in our minds. But I don't know -- we didn't</p> <p>2 have a checklist per se.</p> <p>3 Q. But would you make sure that if you were</p> <p>4 putting out a rule, would you think "I want to make sure</p> <p>5 this is not going to have a retrogressive effect because</p> <p>6 I'm going to have problems"? Would you foresee the</p> <p>7 Section 5 process, in other words?</p> <p>8 A. Yes, and how it would impact all voters. I</p> <p>9 mean, that was always a part of what the Elections</p> <p>10 Division is charged to do per statute. So yes, we would</p> <p>11 keep that in mind if we were -- anything we did,</p> <p>12 creating a form or issuing a directive or adopting a</p> <p>13 rule.</p> <p>14 Q. Can you think of a time when you did any</p> <p>15 factual analysis of any rule or regulation or anything</p> <p>16 administratively you did to ensure that it would not run</p> <p>17 into problems with Section 5?</p> <p>18 A. Factual analysis meaning doing some sort of</p> <p>19 investigation?</p> <p>20 Q. Yes.</p> <p>21 A. No, we didn't -- we didn't have resources for</p> <p>22 that sort of thing.</p> <p>23 Q. And did you take any steps to ensure within the</p> <p>24 Division that your rules and regulations were not</p> <p>25 adopted or promulgated with a discriminatory purpose?</p>	<p style="text-align: center;">63</p> <p>1 Q. Great. And this is the notice of your</p> <p>2 deposition for today; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Turning your attention to the list of documents</p> <p>5 on -- at Attachment A, three pages in, do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Did you undertake a search for documents</p> <p>8 responsive to these list of documents today?</p> <p>9 A. I did, but all of these documents would be at</p> <p>10 the Secretary of State's Office. So --</p> <p>11 Q. Did you take any documents with you related to</p> <p>12 the voter ID or photo ID when you left --</p> <p>13 A. No.</p> <p>14 Q. -- the employment of the Election Division?</p> <p>15 A. I did not.</p> <p>16 Q. I'm sorry. I just want to make sure that we're</p> <p>17 not talking over each other.</p> <p>18 A. Sorry.</p> <p>19 Q. You anticipated my long question. Thank you.</p> <p>20 So did you have any work-related</p> <p>21 communications on your home computer?</p> <p>22 A. No.</p> <p>23 Q. Or in your home office files?</p> <p>24 A. No.</p> <p>25 Q. And you did not take any files when you left</p>
<p style="text-align: center;">62</p> <p>1 A. I mean, we were -- I have to think how to</p> <p>2 answer that question, because it's kind of like obeying</p> <p>3 the law. And so it was -- I think it -- it was inherent</p> <p>4 as part of our responsibilities to make sure that</p> <p>5 anything we did was fair to all voters, including</p> <p>6 complying with Section 5 of the Voting Rights Act.</p> <p>7 MR. MORTARA: Ms. Westfall, we've been</p> <p>8 going for over an hour. I don't need a break. But if</p> <p>9 Chris or Ms. McGeehan need a break, I just wanted to</p> <p>10 advise Ms. McGeehan that she doesn't have to wait for</p> <p>11 you to call a break if she wants one.</p> <p>12 MS. WESTFALL: Certainly. No. I advised</p> <p>13 Ms. McGeehan if she needs a break. Do you need a break,</p> <p>14 Ms. McGeehan?</p> <p>15 THE WITNESS: Actually, I would like a</p> <p>16 break.</p> <p>17 MS. WESTFALL: Go ahead and take a break.</p> <p>18 We're at a good point.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 (Recess from 10:54 a.m. to 11:18 a.m.)</p> <p>21 (Exhibit 282 marked for identification.)</p> <p>22 Q. (By Ms. Westfall) You've been handed what's</p> <p>23 marked as U.S. 282. Have you seen this document before?</p> <p>24 A. I don't think I've seen this one. I think I</p> <p>25 saw the original notice of deposition.</p>	<p style="text-align: center;">64</p> <p>1 the Division; is that right?</p> <p>2 A. I did not.</p> <p>3 Q. Did you do any -- conduct any work on your</p> <p>4 personal e-mail?</p> <p>5 A. No.</p> <p>6 Q. So you have not searched for these documents;</p> <p>7 is that correct, because this --</p> <p>8 A. I don't have custody of them.</p> <p>9 Q. They belong to your former employer; is that</p> <p>10 right?</p> <p>11 A. Yes. That's right.</p> <p>12 Q. Okay. All right.</p> <p>13 MS. WESTFALL: Mr. Mortara, are you aware</p> <p>14 of whether the documents listed in the schedule have you</p> <p>15 been produced?</p> <p>16 MR. MORTARA: No. I am not personally</p> <p>17 aware. I have no reason to believe that they have not,</p> <p>18 and if you need at a break, I can confer with</p> <p>19 Mr. Sweeten or send an e-mail to the team and get you</p> <p>20 that confirmation e-mail.</p> <p>21 MS. WESTFALL: Thank you.</p> <p>22 MR. MORTARA: I have no reason to believe</p> <p>23 that they have not.</p> <p>24 MS. WESTFALL: Thank you.</p> <p>25 Q. (By Ms. Westfall) Ms. McGeehan, have you</p>



<p style="text-align: center;">65</p> <p>1 attended professional conferences at which photo ID was</p> <p>2 discussed?</p> <p>3 A. Yes.</p> <p>4 Q. Which ones?</p> <p>5 A. Well, the -- the Secretary of State conference</p> <p>6 for election officials, we routinely discuss new</p> <p>7 legislation, so Senate Bill 14 was discussed at that</p> <p>8 2011 conference. It may have been discussed in past</p> <p>9 conferences when we do a recap of legislation just to</p> <p>10 simply say that it did not pass. But in 2011, it was on</p> <p>11 the agenda.</p> <p>12 Q. Where was that conference held?</p> <p>13 A. It was held in Austin at the Renaissance Hotel</p> <p>14 by the Arboretum.</p> <p>15 Q. Did you speak at that conference?</p> <p>16 A. Yes.</p> <p>17 Q. What month in 2011?</p> <p>18 A. It was either July or August. I don't remember</p> <p>19 right now. It was a summer conference.</p> <p>20 Q. And was this a statewide meeting or a</p> <p>21 nationwide meeting of secretaries of state?</p> <p>22 A. This was a statewide meeting of county election</p> <p>23 officials in Texas.</p> <p>24 Q. Did you prepare written remarks for that</p> <p>25 meeting?</p>	<p style="text-align: center;">67</p> <p>1 Q. Did you prepare written remarks for that?</p> <p>2 A. Probably had an outline for '07.</p> <p>3 MS. WESTFALL: And, Mr. Mortara, I would</p> <p>4 ask that to the extent those documents are responsive to</p> <p>5 our document request, which I believe they are, we would</p> <p>6 request that they be produced if they have not already</p> <p>7 been produced.</p> <p>8 MR. MORTARA: I think that they have, but</p> <p>9 if you want to follow up with correspondence to confirm,</p> <p>10 we will.</p> <p>11 MS. WESTFALL: Thank you.</p> <p>12 Q. (By Ms. Westfall) Have you ever had any</p> <p>13 conversations with any county election official in Texas</p> <p>14 in which that individual indicated a need for photo ID?</p> <p>15 A. Yes.</p> <p>16 Q. Which official?</p> <p>17 A. Joy Streeter in Comal County. There may have</p> <p>18 been other ones, but that's one that comes to mind.</p> <p>19 There may have been -- there may have been other county</p> <p>20 officials as well, but --</p> <p>21 Q. And when did Ms. Streeter talk to you?</p> <p>22 A. It was probably -- well, it was at the</p> <p>23 legislature before a hearing or during a hearing,</p> <p>24 something like that, a conversation when we were both</p> <p>25 getting ready to testify at a hearing.</p>
<p style="text-align: center;">66</p> <p>1 A. I usually would do an outline of my comments.</p> <p>2 Q. Did you retain a copy of those remarks?</p> <p>3 A. I do not have it. It might be on the computer</p> <p>4 at SOS.</p> <p>5 Q. Thank you. Have you ever presented remarks at</p> <p>6 a conference, at any other conference at which you spoke</p> <p>7 about photo ID or voter ID?</p> <p>8 A. Again, just to get back, this was one of the</p> <p>9 initial points is, you know, photo ID -- I mean, photo</p> <p>10 ID clearly relates to Senate Bill 14, because photo ID</p> <p>11 is not required under current law. But current law</p> <p>12 requires some form of ID. Some people use the term</p> <p>13 "voter ID," which may not mean photo ID. So, routinely,</p> <p>14 at our Secretary of State's seminars, we would discuss</p> <p>15 the law which requires some form of voter identification</p> <p>16 in order to vote.</p> <p>17 Q. I see. Between the period of 2005 and when you</p> <p>18 left the Division, did you speak about photo ID laws,</p> <p>19 either proposed or enacted, at any conferences, other</p> <p>20 than the one you just testified to?</p> <p>21 A. We probably discussed it in 2009 as part of the</p> <p>22 recap. At a seminar that occurs after a legislative</p> <p>23 session, we do a legislative summary. So I'm sure we</p> <p>24 probably mentioned it and the fact that it did not</p> <p>25 pass. But it wouldn't have been a lengthy discussion.</p>	<p style="text-align: center;">68</p> <p>1 Q. Do you recall what year that was?</p> <p>2 A. I don't remember if it was '09 or 2011. I</p> <p>3 don't really remember which one, but it was one of</p> <p>4 those.</p> <p>5 Q. Can you describe the substance of the</p> <p>6 conversation?</p> <p>7 A. No. It was a passing remark, and I usually</p> <p>8 don't engage in policy discussions with folks, so...</p> <p>9 Q. Did she indicate any basis for her support for</p> <p>10 photo ID?</p> <p>11 A. No. Like I said, I didn't really engage in the</p> <p>12 conversation, and it was really a comment she made.</p> <p>13 Q. How long was the conversation?</p> <p>14 A. It was very short.</p> <p>15 Q. Did she simply express support for photo ID?</p> <p>16 A. Yes.</p> <p>17 Q. Did she give you any indication of why she</p> <p>18 supported photo ID?</p> <p>19 A. I don't really remember, to be honest with</p> <p>20 you. I don't remember the details of the conversation.</p> <p>21 Q. And sitting here today, do you remember any</p> <p>22 other similar conversations with county election</p> <p>23 officials about a need for photo ID other than</p> <p>24 Ms. Streeter?</p> <p>25 A. There may have been similar kind of comments</p>



69

1 made by officials, but again, we would tend to steer  
2 away from any sort of perceived partisan-type issues.

3 Q. But I'm not asking about whether you responded  
4 or agreed or disagreed. I'm asking about the existence  
5 of your knowledge of support from county officials?

6 A. And what I'm saying is there may have been  
7 other officials that made similar comments. I don't  
8 really remember them, because we would generally try not  
9 to have those kind of conversations.

10 Q. Thank you for your testimony.

11 What is the system under state law for  
12 determining how to verify the identity of a voter?

13 A. And I'm going to ask to clarify. Verify the  
14 identity of a voter presenting themselves at the polling  
15 place and not talking about as registering to vote?

16 Q. Let's start with at the polling place.

17 A. The current law is that a voter is required to  
18 show their certificate, their voter registration  
19 certificate, or if they don't have a voter registration  
20 certificate, then they can present another form of ID.  
21 And there's a fairly long list. And because I don't do  
22 this every day anymore, I don't really have it off the  
23 top of my head anymore, so...

24 Q. What happens if a voter doesn't have either the  
25 voter registration card or one of those forms of ID at

70

1 the polls on election day?

2 A. Then they -- they're given the opportunity to  
3 vote a provisional ballot.

4 Q. Does the voter need --

5 A. I believe. I'm pretty sure that's right. And  
6 that's -- you see, that's the problem; I haven't been  
7 doing this for six months, but I'm fairly certain --  
8 yes, that's case. If a voter does not have any form of  
9 ID, then they're given the opportunity to vote a  
10 provisional ballot.

11 Q. Does the voter need to take any additional  
12 steps to ensure the provisional ballot will be counted?

13 A. There's really not much the voter can do,  
14 actually, because if they don't have ID, even though  
15 they're given the opportunity to vote a provisional  
16 ballot, it will not be counted, because they didn't  
17 provide any identification at the polls.

18 Q. Are you certain that it's not the case under  
19 state law that election officials will consult the  
20 records to determine whether to count the provisional  
21 ballot, and if the signature on the provisional ballot  
22 envelope matches the registration record, that that  
23 provisional ballot will be counted?

24 A. That's not what the law says.

25 Q. Tell me what --

71

1 A. They can do a search like that to find evidence  
2 if a voter is registered to vote. But if they have not  
3 presented a form of ID, then they're allowed to count  
4 that ballot. There's no way to cure that under current  
5 law.

6 Q. I see. And of the forms of ID that are  
7 acceptable at the polls today, do many of them include  
8 nonphoto IDs?

9 A. Yes.

10 Q. And are they kind of similar to the forms of  
11 photo ID that are acceptable and listed under the Help  
12 America Vote Act, i.e., utility bills, government  
13 correspondence, et cetera? Is it a large wide range?

14 A. Yeah. I think it's about 11 or 12 items.

15 Q. And when you register to vote, the county  
16 election official will mail you a copy of your voter  
17 registration card under current law; is that correct?

18 A. Yes.

19 Q. And if the voter doesn't have a voter  
20 registration card at the polls on election day and  
21 presents one of these forms of ID from a wide range of  
22 forms of ID, that voter may vote a regular ballot; is  
23 that right?

24 A. That's right.

25 Q. Are you aware of any reports of a voter

72

1 registration card being stolen in the mail from a voter?

2 A. Reports or information reported to the  
3 Secretary of State's office?

4 Q. Let's -- I would say reports, generally, have  
5 you ever heard about that?

6 A. There may -- I mean, I may have heard something  
7 like that said at a hearing. I don't believe we have  
8 it -- that when I was at the Secretary of State's  
9 office, we had anybody file anything with our office  
10 indicating that.

11 Q. So you've never investigated any of those  
12 claims, to your knowledge, while employed with the  
13 Division?

14 A. Well, actually, I take that back. I think we  
15 did have a -- I think we did have an allegation, a  
16 written complaint that voter registration certificates  
17 were stolen.

18 Q. Who made that complaint?

19 A. I don't remember, but I believe we referred it  
20 to the Attorney General for investigation.

21 Q. When was that complaint made?

22 A. In the last four years. I don't remember  
23 exactly.

24 Q. Did it pertain to one card or more than one  
25 card?





73

1 A. It was several cards.

2 Q. A handful of cards?

3 A. It was a bunch of cards. It was a bunch of  
4 voter registration certificates. I don't remember all  
5 the details, but --

6 Q. Do you know whether any prosecutions arose from  
7 that?

8 A. I don't know.

9 Q. And where were those cards alleged to have been  
10 stolen?

11 A. I think they were stolen out of someone's car  
12 or -- I don't remember all the details. I think it was  
13 in relation to a primary. It may have been the --  
14 either the 2008 primary or the 2010 primary. And to be  
15 honest, my memory is fuzzy on that.

16 Q. Is it possible that you're referring to voter  
17 registration applications and not cards?

18 A. No, these were certificates. These were voter  
19 registration certificates.

20 Q. That were -- had been in the custody of a  
21 county election official; is that right?

22 A. I don't remember the line of custody, but yeah,  
23 I -- initially, they came out of a county office, and I  
24 don't really remember -- I don't remember the details.

25 Q. Did you yourself have any involvement in the

74

1 development of the current system for identifying a  
2 voter at the polls on election day under the Texas  
3 election code?

4 A. The -- I think the only role that I may have  
5 played is in, when the Help America Vote Act passed,  
6 was -- you know, advising the legislature on how to  
7 integrate that federal law into the Texas state law,  
8 including what a voter has to present at the polls, if  
9 it is a voter that the state has not been able to  
10 confirm their voter -- their driver's license number or  
11 Social Security number under HAVA.

12 Q. I see. And how long has the current system for  
13 identifying voters at the poll been in place in Texas?

14 A. My recollection is that in either 1997 or 1999,  
15 one of those sessions, the legislature passed the  
16 requirement to affirmatively require some form of ID,  
17 this list that we talked about. Prior to that time, a  
18 voter didn't have to show anything. That was in either  
19 '97 or '99. In 2003, the legislature passed -- I  
20 believe it was 2003, the legislature passed a bill to  
21 implement HAVA, which I don't think really changed that  
22 list.

23 It may be more in Secretary of State rules  
24 and procedures where the interaction between confirming  
25 a voter's identity on the voter registration process and

75

1 how that impacts the voter registration list, that may  
2 not be in the law, per se, that may be more through  
3 directives issued by the Secretary of State.

4 Q. I see. And to your knowledge, was the Help  
5 America Vote Act and its set of IDs contained therein,  
6 was that in part based on the list under -- that existed  
7 under Texas law at the time?

8 A. Did Congress base their list?

9 Q. (Nodding head yes.)

10 A. I don't know.

11 Q. Is the current system for identifying a voter  
12 at the polls effective in identifying voters in your  
13 opinion?

14 A. Effective in terms of?

15 Q. Does it do the job? Does it, in fact, ensure  
16 identification of voters at the polls?

17 A. That's a difficult question for me to  
18 answer. I mean, we -- we advise county officials on the  
19 rules to follow. We don't do any investigation, or  
20 Secretary of State's Office doesn't do any investigation  
21 to double-check that.

22 Q. To your knowledge, is it -- is the current  
23 system not effective, and does it fail to identify  
24 voters at the polls?

25 A. You know, as -- when I was a state employee,

76

1 it's my duty to implement the law. It's not my duty to  
2 make policy judgments on what's good and what's not  
3 good.

4 Q. But you worked for the Election Division, did  
5 you not?

6 A. Yes.

7 Q. And you received complaints or information  
8 about the effectiveness of systems --

9 A. We would routinely --

10 Q. -- because you administered the law, correct?

11 A. Right. I guess the deal is, we routinely  
12 received complaints from both sides. It's always a  
13 balance between access to the ballot and making sure the  
14 election process is secure and maintaining integrity.  
15 So it's always that battle. And so we hear from folks  
16 on both edges of those issues. And so, generally, we  
17 don't get into those. Generally, what we look at is are  
18 the laws being followed as the legislature has passed  
19 them as they have been precleared by the Justice  
20 Department.

21 Q. I understand.

22 A. It's not our role to judge.

23 Q. I understand. I'm not asking you to take a  
24 policy position based on your past position with the  
25 Election Division.



77

1 Let me ask you another question: Do you  
2 have any facts or information that you could testify  
3 today that would indicate that the current system has  
4 failed in any instance to identify a voter at the polls?

5 A. We've been asked that question in legislative  
6 committee meetings and we've provided data. You know, I  
7 don't have the numbers at my fingertips on that.

8 Q. Okay. And we will talk about your testimony a  
9 little bit later today. I understand your testimony  
10 before the hearings in the Senate and the House, and  
11 otherwise. But outside of that testimony, is there any  
12 other set of facts or information that you can provide  
13 to us today about how the current system has failed to  
14 identify voter at the polls on election day?

15 A. No. I don't think so.

16 Q. Do you recall that in 2000, you were quoted in  
17 the Dallas morning news?

18 A. In 2000?

19 Q. In 2000. To the effect -- and we can use an  
20 exhibit if that would help to refresh your  
21 recollection -- that in the polling place you have a lot  
22 of measures in place to protect the integrity of the  
23 ballot but voting at home has none of those safeguards.  
24 Do you remember that?

25 A. Yes, I do.

78

1 Q. What did you mean when you said there are a lot  
2 of measures in place in a polling place to protect the  
3 integrity of a ballot? What measures?

4 A. Well, it's a public setting, and you've got,  
5 you know, representatives of the government essentially  
6 administering the voting process. And you may have poll  
7 watchers present and other voters present, and state law  
8 controls, as opposed to a voter voting by mail in the  
9 privacy of his or her home, and you don't have those  
10 safeguards.

11 Q. And how do those safeguards you've just  
12 described and testified to protect the integrity of the  
13 ballot in the polling place?

14 A. Well, I mean, the intent of those laws is to  
15 make sure that only, you know, eligible voters vote,  
16 that they vote one ballot, and that, also, that their  
17 rights are protected. So I guess that's how.

18 Q. Thank you.

19 How are those safeguards absent when  
20 you're voting from home?

21 A. There's nobody from the -- the entity holding  
22 the election is not present. You don't have any  
23 representatives of that entity. And so there have been  
24 occasions where voters can be targeted, especially  
25 elderly voters, where, you know, there are attempts to

79

1 manipulate their vote.

2 Q. Are you aware of any issues or concerns about  
3 fraud that have arisen from mail-in ballot procedures in  
4 the state of Texas?

5 A. Yes. And in 2003, the legislature passed a  
6 fairly significant bill to try to address some of those  
7 issues where, you know, more signatures are required for  
8 anybody who assists the voter, requests a ballot, and  
9 you have to put their name and address and sign it. And  
10 I believe the AG has prosecuted some of those that where  
11 those signatures were not provided.

12 And I don't know that any legislation was  
13 enacted in 2011. I think there was a report issued  
14 after the 2009 session on the issue of mail -- mail-in  
15 voting and concerns about mail-in voting.

16 Q. Since the legislature enacted that law in 2003,  
17 are you aware of convictions for voter fraud based on  
18 the mail-in votes?

19 A. Yes. I believe there have been several through  
20 the Attorney General's Office.

21 Q. Do you know the number?

22 A. I don't know the number.

23 Q. And who would know that?

24 A. I think the -- someone in the Attorney  
25 General's Office would have that data.

80

1 Q. When did you first hear any support for  
2 enacting a photo ID law in the state of Texas?

3 MR. MORTARA: Ms. McGeehan, although the  
4 question doesn't call for it, it's broad enough to cover  
5 communications you may have had with legislators that  
6 are not on this list, and I just admonish you in that  
7 regard.

8 And, Ms. Westfall, totally happy at  
9 this point for that to be a standing instruction,  
10 because your question is really not in that area anyway,  
11 if you're okay with that?

12 MS. WESTFALL: A standing objection?

13 MR. MORTARA: My point is: Your question,  
14 as broad as it is, would include a communication between  
15 Ms. McGeehan and, for instance, Senator Tommy Williams,  
16 where Tommy Williams --

17 MS. WESTFALL: My question was when. It's  
18 a date question.

19 MR. MORTARA: Oh, I'm sorry. I thought  
20 you said something else.

21 MS. WESTFALL: When, when -- no. Listen  
22 to my question.

23 MR. MORTARA: Okay. Well, let's go  
24 ahead with when.

25 MS. WESTFALL: Let's read back the



<p style="text-align: center;">81</p> <p>1 question.</p> <p>2 MR. MORTARA: When is fine.</p> <p>3 MS. WESTFALL: When is fine.</p> <p>4 Q. (By Ms. Westfall) When did you first hear</p> <p>5 about any support for enacting photo ID with voter</p> <p>6 identification requirement in Texas?</p> <p>7 A. I think -- I mean, I don't know that I can give</p> <p>8 you a date certain. I am thinking it began to be</p> <p>9 discussed in kind of around the same type as HAVA.</p> <p>10 There was a Carter Baker report that talked about it,</p> <p>11 and I don't know if that was maybe 2003, 2004, around</p> <p>12 that time frame.</p> <p>13 Q. How did you learn about it?</p> <p>14 A. I really don't remember. It may have been</p> <p>15 through that Carter Barker report.</p> <p>16 Q. Do you know who was supporting photo ID in the</p> <p>17 State of Texas?</p> <p>18 A. Lots of people supported it. So --</p> <p>19 Q. Where was it stemming from?</p> <p>20 MR. MORTARA: Objection to foundation.</p> <p>21 Q. (By Ms. Westfall) You may answer.</p> <p>22 A. I mean, just generally, it was more of a</p> <p>23 Republican issue, I guess, Republican party issue.</p> <p>24 Q. Do you think that photo ID is motivated in part</p> <p>25 by partisan concerns?</p>	<p style="text-align: center;">83</p> <p>1 a look at this document and let me know if you recognize</p> <p>2 it?</p> <p>3 A. You know, I don't really remember it too well,</p> <p>4 but I'm sure at one point I -- you know. This is 2005?</p> <p>5 Q. Turning your attention to the last page of this</p> <p>6 exhibit on Page 10.</p> <p>7 A. Uh-huh.</p> <p>8 Q. If you look at Section 13, that might refresh</p> <p>9 your recollection.</p> <p>10 A. Yeah. Okay. Okay.</p> <p>11 Q. Do you remember having any involvement with</p> <p>12 this legislation at all?</p> <p>13 A. Not really.</p> <p>14 Q. Do you recall whether the Secretary of State or</p> <p>15 Election Division took any public position on HB 1706?</p> <p>16 A. The Secretary of State -- well, I'm trying to</p> <p>17 remember if -- who was Secretary of State in 2005. The</p> <p>18 Secretary of State may have taken a position on this</p> <p>19 issue. The Elections Division did not.</p> <p>20 Q. Do you know what the Secretary of State's</p> <p>21 position on 1706 was?</p> <p>22 A. Let me just think. Who was Secretary of State</p> <p>23 in 2005? Actually, I don't think anybody did, not in</p> <p>24 2005. Sorry. I don't think there was any public</p> <p>25 position.</p>
<p style="text-align: center;">82</p> <p>1 MR. MORTARA: Objection, form of the</p> <p>2 question.</p> <p>3 Q. (By Ms. Westfall) You may answer.</p> <p>4 A. That may be part of it. It seems to enter into</p> <p>5 just about everything else. So --</p> <p>6 Q. Was there a time when you were employed in the</p> <p>7 Election Division that the Division first became</p> <p>8 involved in the issue of photo ID legislation?</p> <p>9 A. I'm sure when the bill -- when a bill was</p> <p>10 introduced, we would have been involved as far as having</p> <p>11 to analyze the bill and possibly testify.</p> <p>12 Q. Do you recall what year that was?</p> <p>13 A. No.</p> <p>14 Q. And how were you -- what -- strike that.</p> <p>15 Are you familiar with House Bill 1706 from</p> <p>16 2005, introduced by Representative Denny?</p> <p>17 A. I don't remember it right now. I mean, I might</p> <p>18 be able to refresh my memory.</p> <p>19 Q. Why don't we do that.</p> <p>20 MS. WESTFALL: Could you mark this --</p> <p>21 actually, this has been previously marked, Chris, as --</p> <p>22 Court Reporter, as Exhibit 44. Could you mark that for</p> <p>23 the witness.</p> <p>24 Q. (By Ms. Westfall) You've been handed what's</p> <p>25 been previously been marked as U.S. 44. Could you take</p>	<p style="text-align: center;">84</p> <p>1 Q. Are you aware of whether the Division was</p> <p>2 involved in the development of drafting of HB 1706?</p> <p>3 A. I don't think we were.</p> <p>4 Q. Are you aware of the source of the legislative</p> <p>5 language for 1706?</p> <p>6 A. No.</p> <p>7 Q. Are you aware of whether the Division provided</p> <p>8 any facts or information to any House or Senate</p> <p>9 committee related to the HB 1706?</p> <p>10 A. I don't have any memory of that.</p> <p>11 Q. Turn your attention to the section of the</p> <p>12 legislation of HB 1706 at Page 4. Do you see where it</p> <p>13 lists Section 63.0101, Documentation of Proof of</p> <p>14 Identification?</p> <p>15 A. Yes.</p> <p>16 Q. Could you take a look at the forms of ID and</p> <p>17 let me know when you've had a chance to review them?</p> <p>18 A. (Witness complies.) Yes. I've reviewed it</p> <p>19 now.</p> <p>20 Q. Thank you. And HB 1706 includes both photo ID</p> <p>21 and nonphoto ID; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And also includes photo ID cards issued by</p> <p>24 county elections administrators or clerks; is that</p> <p>25 correct?</p>



<p style="text-align: center;">85</p> <p>1 A. Yes.</p> <p>2 Q. Do you know how inclusion of that ID arose in</p> <p>3 this bill?</p> <p>4 A. I do not.</p> <p>5 Q. Did you have any communications with any county</p> <p>6 clerks about that provision?</p> <p>7 A. I don't recall any conversation about that with</p> <p>8 this bill.</p> <p>9 Q. Did you provide any technical guidance to the</p> <p>10 legislature about how photo ID cards involving county</p> <p>11 clerks would be administered?</p> <p>12 A. Not with this bill.</p> <p>13 Q. And do you see that one of the forms of ID is</p> <p>14 military identification cards?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what forms of cards or types of</p> <p>17 cards that category of ID would encompass?</p> <p>18 A. Yes.</p> <p>19 Q. Could you describe that list?</p> <p>20 A. List of military identification cards?</p> <p>21 Q. Yes.</p> <p>22 A. I don't think it's a list. I -- you know, and</p> <p>23 to be honest, I probably can't completely answer that</p> <p>24 question because we were -- because that's one of the</p> <p>25 permitted forms of ID under Senate Bill 14, and because</p>	<p style="text-align: center;">87</p> <p>1 A. In advance of the 2005 session?</p> <p>2 Q. Yes.</p> <p>3 A. I'm -- I'm fairly certain we developed a list</p> <p>4 of cleanup legislation, but that would be technical type</p> <p>5 things, not policy issues.</p> <p>6 Q. Were you involved in development of that</p> <p>7 agenda?</p> <p>8 A. Yes.</p> <p>9 Q. Did it include support for a photo ID law?</p> <p>10 A. No.</p> <p>11 Q. Why not?</p> <p>12 A. That's a policy issue. That wouldn't be</p> <p>13 something we would include in a cleanup list.</p> <p>14 Q. Why do you describe it as a policy issue?</p> <p>15 A. Because it's a matter for the legislature to</p> <p>16 the address. What we saw our role is on technical</p> <p>17 cleanup legislation is to make the existing laws work</p> <p>18 better within the existing framework, not make what I</p> <p>19 term "policy changes" on how and what the law provides.</p> <p>20 Q. In other words, if you saw something that was</p> <p>21 not working or if county clerks complained to you about</p> <p>22 something that was not working, you would not advocate</p> <p>23 for that as the Division, is that your testimony today?</p> <p>24 A. It would depend what the issue was. You know,</p> <p>25 if it was -- again, and our general counsel would be</p>
<p style="text-align: center;">86</p> <p>1 the Secretary of State's Office was in the process of</p> <p>2 preparing to implement that bill. That was something we</p> <p>3 were looking into as to what all would be included under</p> <p>4 military identification card.</p> <p>5 Q. Do you recall whether your office or you were</p> <p>6 involved in any discussion in 2005 about what forms of</p> <p>7 military ID would be encompassed in this definition?</p> <p>8 A. No. I don't even remember this being heard in</p> <p>9 committee. It may have been, but I don't think it got</p> <p>10 very far.</p> <p>11 Q. Did you hear any concerns from bill opponents</p> <p>12 of HB 1706 from the standpoint of the Division?</p> <p>13 A. I don't really recall and -- you know, because</p> <p>14 several of these sessions are kind of merging together,</p> <p>15 so I don't remember this one specifically.</p> <p>16 Q. And do you recall the Division having received</p> <p>17 any requests for information from the legislature</p> <p>18 regarding HB 1706?</p> <p>19 A. I don't recall any.</p> <p>20 Q. Are you aware of any attempt to determine the</p> <p>21 impact of HB 1706 on minority voters?</p> <p>22 A. No.</p> <p>23 Q. In advance of the 2005 legislative session, did</p> <p>24 either the Division or the Secretary of State develop</p> <p>25 legislative priorities for that session?</p>	<p style="text-align: center;">88</p> <p>1 involved in that decision, as well, as to what was</p> <p>2 policy and what was cleanup.</p> <p>3 Q. But was there -- were there times when county</p> <p>4 officials said we need this to be changed, and it wasn't</p> <p>5 a technical change, and you advocated for that change in</p> <p>6 the Division?</p> <p>7 A. No. I don't think so. I think if a county</p> <p>8 official brought something to our attention that was a</p> <p>9 policy issue, we would say, "Hey, you know, this is</p> <p>10 something you all need to go out on your own, and you</p> <p>11 need to lobby for on your own. We can't do that." If</p> <p>12 it was something we saw as a technical correction type</p> <p>13 thing, we would often include it in our list of cleanup</p> <p>14 legislation.</p> <p>15 Q. Did -- to your knowledge, did the legislature</p> <p>16 hold hearings on HB 1706?</p> <p>17 A. You know, I really just can't remember. They</p> <p>18 may have. She was -- I believe that Mary Denny was the</p> <p>19 chair of the committee so probably there was a hearing.</p> <p>20 I just don't have a clear memory of it.</p> <p>21 MS. WESTFALL: Could you mark this as 283?</p> <p>22 (Exhibit 283 marked for identification.)</p> <p>23 Q. (By Ms. Westfall) You've been handed what's</p> <p>24 been marked U.S. 283. Do you recognize this document?</p> <p>25 A. No. Well, I mean, I'm reading it. I haven't</p>



<p style="text-align: center;">89</p> <p>1 seen it before if that's what you're asking.</p> <p>2 Q. Do you see that it refers to a House Committee</p> <p>3 on Elections Subcommittee hearing in March 2005?</p> <p>4 A. Yes.</p> <p>5 Q. And I will represent to you, and I'm sure your</p> <p>6 counsel will not disagree, that this is an excerpt of a</p> <p>7 hearing at which you were available and made some</p> <p>8 remarks, which I can turn your attention to page --</p> <p>9 Bates Stamp Number TX_00212131, or within the document,</p> <p>10 Page 102, where you were introduced by Chairman Bohac.</p> <p>11 Do you see that?</p> <p>12 A. No, I'm sorry.</p> <p>13 Q. Perhaps your counsel can assist you.</p> <p>14 A. Oh, I'm sorry. Okay. I'm sorry. I'm there</p> <p>15 now.</p> <p>16 Q. Certainly. Can you take a look at your remarks</p> <p>17 and let me know when you've had a chance to look at</p> <p>18 them?</p> <p>19 A. (Witness complies.) Okay.</p> <p>20 Q. Can you describe your role at the House hearing</p> <p>21 in March 2005?</p> <p>22 A. It looks like I was explaining the HAVA</p> <p>23 requirement to -- that would -- that was really just in</p> <p>24 existence for a couple of years, that if a voter</p> <p>25 registered to vote for the first time in Texas, and I'm</p>	<p style="text-align: center;">91</p> <p>1 make a judgment on that.</p> <p>2 Q. Do you have any information that it wasn't</p> <p>3 effective?</p> <p>4 A. No. It wasn't -- it wasn't in effect very</p> <p>5 long, so I don't have much experience with it to really</p> <p>6 make a judgment as to how effective it was.</p> <p>7 Q. But based on that brief duration when it was in</p> <p>8 effect, do you have any facts or information indicating</p> <p>9 that it wasn't effective?</p> <p>10 A. No. I don't think either way. I don't have</p> <p>11 much of an opinion on that.</p> <p>12 Q. I was asking for facts. Do you have any facts?</p> <p>13 A. I don't have any facts on it.</p> <p>14 Q. Thank you for your testimony.</p> <p>15 Could you describe every rule, law or</p> <p>16 procedure currently in place to verify the identity,</p> <p>17 citizenship and eligibility of a voter applicant, in a</p> <p>18 general sense, but --</p> <p>19 A. The question relates to someone applying to</p> <p>20 register to vote?</p> <p>21 Q. Correct.</p> <p>22 A. And could you restate your question again</p> <p>23 for --</p> <p>24 Q. Certainly. Could you describe every rule, law</p> <p>25 or procedure currently in place for verifying the</p>
<p style="text-align: center;">90</p> <p>1 -- I have to refresh my memory on what the rules was</p> <p>2 again. Sorry. Like I said, I'm getting rusty on this</p> <p>3 stuff. So --</p> <p>4 Q. Take your time.</p> <p>5 A. Yes. I'm sorry. Because it related to the</p> <p>6 HAVA requirement, that before the state had the</p> <p>7 statewide database in place and had set up a system to</p> <p>8 verify the driver's license number or Social Security</p> <p>9 number, first time -- a voter who registered to vote for</p> <p>10 the first time had to present ID at the polls, or they</p> <p>11 could enclose it when they registered to vote. They</p> <p>12 could enclose the copy of their ID when they registered</p> <p>13 to vote.</p> <p>14 Q. And is it your view, based on your experience</p> <p>15 in the Elections Division, that that is an effective way</p> <p>16 of confirming a voter's identity?</p> <p>17 A. We only did it for a couple of years, because</p> <p>18 that HAVA -- the state can't get away with that</p> <p>19 forever. So it was a sort of an interim solution until</p> <p>20 the state could implement the state-wide voter</p> <p>21 registration system.</p> <p>22 Q. To your knowledge, was that effective during</p> <p>23 that interim period you've just testified to in</p> <p>24 identifying voters at the polls and for registration?</p> <p>25 A. I don't really have any -- any data to really</p>	<p style="text-align: center;">92</p> <p>1 identity, citizenship and eligibility of a voter</p> <p>2 applicant?</p> <p>3 MR. MORTARA: And you will be graded on</p> <p>4 your response.</p> <p>5 MS. WESTFALL: Pardon?</p> <p>6 MR. MORTARA: And you will be graded on</p> <p>7 your response.</p> <p>8 A. I mean, that is a very big question, and</p> <p>9 there's a lot of components to it. And specifically,</p> <p>10 you're asking for U.S. citizenship? I'm sorry to</p> <p>11 make --</p> <p>12 Q. (By Ms. Westfall) Identity --</p> <p>13 A. Identity.</p> <p>14 Q. -- and eligibility under Texas law to register</p> <p>15 to vote, how does Texas confirm those things when an</p> <p>16 individual attempts to register to vote?</p> <p>17 A. Basically, the only thing that -- you know, and</p> <p>18 it kind of depends on at what point in time, but when a</p> <p>19 person applies to register to vote --</p> <p>20 Q. Currently?</p> <p>21 A. -- currently, the only element that's actually</p> <p>22 verified or attempted to be verified by the state is the</p> <p>23 identity based on the driver's license number they</p> <p>24 provide or the last four digits of their Social Security</p> <p>25 number. The state does not verify citizenship upfront</p>





93

1 or overall eligibility.

2 There are processes in place once a voter  
3 is registered so, you know, to keep the rolls clean, so  
4 where there are checks against felons and, you know,  
5 mental incapacity, you know, abstracts. And then  
6 there's our routine, you know, mass mail renewal voter  
7 registration certificate that helps finding issues if  
8 someone has moved and are no longer eligible.

9 But the upfront process of registering to  
10 vote, you know, the process is the county reviews the  
11 application, makes sure all the boxes are filled in.

12 Q. And the applicant -- not to interrupt you.

13 A. Yeah.

14 Q. My apologies. But the applicant signs under  
15 penalty of law --

16 A. Right. That's correct.

17 Q. -- that they're affirming certain  
18 information --

19 A. The information.

20 Q. -- about their eligibility; is that correct?

21 A. Yes, that's correct.

22 Q. So that's one rule in place; is that right?

23 And that's codified under Texas law?

24 A. Yes.

25 Q. Thank you. I'm sorry for interrupting. Go

94

1 ahead.

2 A. The application doesn't come to the state  
3 first. It goes to the county voter registrar. The  
4 county voter registrar reviews it first, makes sure the  
5 address they're providing is in the county. So in that  
6 sense, they look at the address, but they don't confirm  
7 whether somebody actually lives there or not.

8 Q. They make sure that it's an address that  
9 exists?

10 A. That exists in their county. If it's in  
11 another county, they send it to another county.

12 And then it goes to the state for the  
13 state to verify the identification number that's been  
14 provided. So, you know, anyway, so that's the process  
15 of becoming registered.

16 And then after the fact, there are some  
17 routine checks to make sure that the rolls remain clean,  
18 so they're checked against, you know, database of  
19 deceased persons, felons.

20 And on the U.S. citizenship issue, if a  
21 person claims they're not eligible for jury service  
22 because they're not citizens, then that should trigger a  
23 process where they are sent a letter requesting them to  
24 confirm that they are, in fact -- actually, they have to  
25 show proof of citizenship at that point, and that's one

95

1 way to keep -- to have a check on citizenship.

2 Q. Great. Thank you.

3 Could you describe the rules in place to  
4 determine whether a voter who requests an absentee  
5 ballot or mail-in ballot is a registered eligible voter?

6 A. The basic rules are that they -- the voter has  
7 to submit a written request. They have to state a valid  
8 reason for voting by mail. And there are only  
9 four. The early voting clerk reviews that, and the only  
10 thing they can really verify is if they state they're  
11 over 65, they can check the voter registration rolls,  
12 but they can't verify if they're disabled or if they're  
13 out of the county. You know, the other eligibility  
14 criteria is if you're in jail but otherwise eligible to  
15 vote.

16 Q. So, in other words, a voter submits a form  
17 swearing that he or she is registered and that there is  
18 a reason --

19 A. Right.

20 Q. -- to submit the mail-in ballot?

21 A. (Witness nods head yes.)

22 Q. Are there any other checks in place for  
23 verifying that voter who is seeking an absentee ballot?

24 A. Not at that point.

25 Q. Are there any other checks at any other points?

96

1 A. When -- when the ballot comes back in and when  
2 the early voting ballot board reviews the ballot, they  
3 basically review it again, making sure it's a valid  
4 reason. They might check the date of birth. They  
5 compare signatures on the application to the actual  
6 voted ballot. And that's about it. If they were  
7 required to sign a statement of residence, that would  
8 have to be included, and they would have to check for  
9 that.

10 Q. Thank you. Do you recall whether a photo ID  
11 bill was introduced in the 2007 session?

12 A. I think it probably was.

13 Q. Do you know the number?

14 A. No.

15 Q. And by the way, before we get to 2007, do you  
16 know what happened -- did any photo ID bill pass in the  
17 legislature in 2005?

18 A. No.

19 Q. Do you know why?

20 A. I don't remember. I don't really have a very  
21 good memory of that 2005 session on that issue.

22 Q. I'm going to hand you what's been previously  
23 marked as Exhibit 28.

24 You've been handed what's been marked,  
25 previously marked as Exhibit 28. Do you recognize this



<p style="text-align: center;">97</p> <p>1 exhibit?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. It is House Bill 218 from the 2007 session.</p> <p>5 Q. Do you know who in particular drafted 218?</p> <p>6 A. I think the primary sponsor was Representative</p> <p>7 Brown, but I could be wrong on that. So I don't really</p> <p>8 know.</p> <p>9 Q. Do you know the source of the legislative</p> <p>10 language --</p> <p>11 A. No.</p> <p>12 Q. -- for HB 218?</p> <p>13 A. Well, other than Texas Legislative Council.</p> <p>14 Q. Do you know who at the council drafted it?</p> <p>15 A. No.</p> <p>16 Q. Do you have a guess?</p> <p>17 A. They generally have certain attorneys that, you</p> <p>18 know, have certain subject matter expertise.</p> <p>19 Q. Do you think it would have been Jennifer</p> <p>20 Jackson?</p> <p>21 A. It could have been, but I don't know.</p> <p>22 Q. Are you familiar with the provisions of HB 218?</p> <p>23 A. I would have to refresh my memory.</p> <p>24 Q. Would you like a chance to do so?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">99</p> <p>1 MS. WESTFALL: Off the record for one</p> <p>2 minute.</p> <p>3 (Brief discussion off the record.)</p> <p>4 Q. (By Ms. Westfall) Ms. McGeehan, do you now</p> <p>5 have an exhibit that is complete?</p> <p>6 A. Yes.</p> <p>7 Q. Could you describe the forms of ID that are</p> <p>8 listed in Exhibit 28, House Bill 218?</p> <p>9 A. I guess there's two lists. There's a list of</p> <p>10 acceptable photo identification, and then there's a list</p> <p>11 of nonphoto identification.</p> <p>12 Q. Does it appear, based on your review, that this</p> <p>13 list is similar to HB 1706, to which you just testified,</p> <p>14 the previous exhibit that you looked at from 2005?</p> <p>15 A. Yeah. I think it's similar. I think there's</p> <p>16 -- well, I'd have to compare it, but -- can I compare</p> <p>17 it?</p> <p>18 Q. Certainly.</p> <p>19 A. Because I think it might have had the same</p> <p>20 problem.</p> <p>21 Q. What is the problem?</p> <p>22 A. Well, I just want to make sure that they both</p> <p>23 have the same issue that you present one form of photo</p> <p>24 ID or two forms of nonphoto.</p> <p>25 Q. Why do you describe that as a problem? Is it</p>
<p style="text-align: center;">98</p> <p>1 Q. Particularly drawing your attention to the</p> <p>2 forms of ID listed at Page 9 of this document.</p> <p>3 A. Okay. (Witness reading.) Okay.</p> <p>4 Q. Have you had a chance to review the forms of</p> <p>5 ID?</p> <p>6 A. Yes.</p> <p>7 Q. Could you describe them for me?</p> <p>8 A. A driver's license that hasn't expired, issued</p> <p>9 by the Texas Department of Public Safety. A U.S.</p> <p>10 military identification card that contains the person's</p> <p>11 photograph. A valid employee identification card that</p> <p>12 contains -- you know what, I'm missing some pages.</p> <p>13 Here. That's why. Yeah, that's why, because there's --</p> <p>14 yeah.</p> <p>15 Q. May I have that exhibit?</p> <p>16 A. Yeah.</p> <p>17 MS. WESTFALL: Mr. Mortara, could I see</p> <p>18 your copy of the exhibit to see if there are errors all</p> <p>19 around? If it is acceptable to you, could I examine</p> <p>20 with your copy, Mr. Mortara?</p> <p>21 MR. MORTARA: Yes. It is completely</p> <p>22 acceptable.</p> <p>23 MS. WESTFALL: Thank you. I'm delighted</p> <p>24 to hear that.</p> <p>25 MR. MORTARA: I'm delighted to tell you.</p>	<p style="text-align: center;">100</p> <p>1 difficult to administer?</p> <p>2 A. No. I meant I was afraid that 1706 was a</p> <p>3 partial copy like the other one was.</p> <p>4 Q. I see. I see.</p> <p>5 A. I'm sorry. I guess they look similar.</p> <p>6 Q. Are they essentially the same?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. Do you know whether any of this language came</p> <p>9 from the Lieutenant Governor's office?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know whether any of it came from outside</p> <p>12 the Texas legislature?</p> <p>13 A. I don't know.</p> <p>14 Q. And do you know whether any of it came from the</p> <p>15 Governor's office?</p> <p>16 A. I don't know.</p> <p>17 Q. Did the Secretary of State or the Election</p> <p>18 Division take a public position on HB 218?</p> <p>19 A. I think the Secretary of State at that time was</p> <p>20 Roger Williams. He may have. I -- but the Elections</p> <p>21 Division did not.</p> <p>22 Q. Do you recall that secretary -- Secretary of</p> <p>23 State Williams made a public comment about photo ID not</p> <p>24 likely increasing the level of voter turnout? Do you</p> <p>25 recall that statement?</p>



<p style="text-align: center;">101</p> <p>1 A. No.</p> <p>2 Q. Do you know whether he held that belief?</p> <p>3 A. I -- I don't know if he held that belief. I</p> <p>4 don't remember that, him saying that.</p> <p>5 Q. Do you agree with that sentiment?</p> <p>6 A. Whether requiring voter ID would increase voter</p> <p>7 turnout?</p> <p>8 Q. Will not increase voter turnout?</p> <p>9 A. The statement is requiring voter ID will not</p> <p>10 increase voter turnout?</p> <p>11 Q. Correct.</p> <p>12 A. I don't know that I would agree with that.</p> <p>13 Q. Do you think it will increase voter turnout?</p> <p>14 A. I don't know that anyone knows what increases</p> <p>15 voter turnout. And a lot of bills that were designed to</p> <p>16 increase voter turnout have not. So I don't know that</p> <p>17 it's -- I don't know that I agree with that statement.</p> <p>18 Q. Is it your testimony that you can't predict</p> <p>19 whether it will increase voter turnout?</p> <p>20 A. That's true. I couldn't predict whether it</p> <p>21 would increase voter turnout.</p> <p>22 Q. Did you or the Division play any role in the</p> <p>23 development of drafting of HB 218?</p> <p>24 A. No. I don't believe we did.</p> <p>25 Q. Did anyone in the legislature or legislative</p>	<p style="text-align: center;">103</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall whether the -- whether the</p> <p>3 Division provided any information to the legislature</p> <p>4 concerning HB 218?</p> <p>5 A. Information as in data or?</p> <p>6 Q. Data, factual analysis, any information broadly</p> <p>7 defined.</p> <p>8 A. We -- we probably testified as a resource on</p> <p>9 the bill. I don't recall any other data being exchanged</p> <p>10 in 2007.</p> <p>11 Q. Do you recall any requests for information?</p> <p>12 A. Well, I take that back. The House Elections</p> <p>13 Committee may have asked for data in 2007 related to</p> <p>14 some of these -- some of the issues related to voter</p> <p>15 registration.</p> <p>16 Q. And by that you mean specifically?</p> <p>17 A. Well, and I'm -- again, I am confusing the</p> <p>18 sessions. I don't really remember if it was 2007 or</p> <p>19 2009, but the House Elections -- House Elections</p> <p>20 Committee, at least one or both of those sessions, asked</p> <p>21 questions regarding the number of registered voters, who</p> <p>22 registers with driver's license, who registers with</p> <p>23 Social Security number, and I believe these were</p> <p>24 questions that were asked at organizational meeting of</p> <p>25 the House Elections Committee.</p>
<p style="text-align: center;">102</p> <p>1 counsel contact the Elections Division concerning HB</p> <p>2 218?</p> <p>3 A. Did anybody in the legislation or where else?</p> <p>4 Q. Legislative counsel, the TLC.</p> <p>5 A. Probably.</p> <p>6 Q. Do you remember that happening?</p> <p>7 A. I don't know if it was for this year or another</p> <p>8 year, but they would contact us on a bill like -- like</p> <p>9 this, that's making a lot of changes to the election</p> <p>10 code.</p> <p>11 Q. I guess I'm trying to figure out with just --</p> <p>12 just with regard -- turning your attention just with</p> <p>13 regard to HB 218, do you recall such communications?</p> <p>14 A. I don't specifically recall them, but that</p> <p>15 doesn't mean they didn't happen.</p> <p>16 Q. Do you think it would have, based on your</p> <p>17 experience at the Division, it would have been likely</p> <p>18 that either the legislature, a member of committee staff</p> <p>19 and/or the Legislative Counsel would have contacted the</p> <p>20 Elections Division about --</p> <p>21 A. Yes. I think that would be likely.</p> <p>22 Q. And I believe you just testified that they</p> <p>23 ordinarily would when there were changes to the code as</p> <p>24 significant, expansive, substantial, as the ones</p> <p>25 contained in this HB 218; is that correct?</p>	<p style="text-align: center;">104</p> <p>1 Q. Was that in the public record in the hearing?</p> <p>2 A. Yes.</p> <p>3 Q. Did any staff ask you separately for that</p> <p>4 information, or was it simply confined to the public</p> <p>5 record?</p> <p>6 MR. MORTARA: Ms. McGeehan, if the</p> <p>7 specific information is part of the question, which I'm</p> <p>8 not clear it is.</p> <p>9 Is the question any information or the</p> <p>10 specific set of information that Ms. McGeehan just</p> <p>11 discussed? Ms. Westfall, I need you to clarify the</p> <p>12 question.</p> <p>13 MS. WESTFALL: Could you repeat back the</p> <p>14 question?</p> <p>15 MR. MORTARA: The question just said any</p> <p>16 information.</p> <p>17 MS. WESTFALL: Could you repeat back the</p> <p>18 question?</p> <p>19 (Requested portion read back by the court</p> <p>20 reporter.)</p> <p>21 Q. (By Ms. Westfall) I was referring back to</p> <p>22 information about the number of registered voters who</p> <p>23 registered with a driver's license or Social Security</p> <p>24 number.</p> <p>25 MR. MORTARA: You may not answer that</p>



<p style="text-align: center;">105</p> <p>1 question with respect to any legislator not on this list 2 or their staff. You may answer it with respect to these 3 legislators.</p> <p>4 A. Right. What I'm remembering are questions that 5 Representative Anchia asked at the hearing, but again, I 6 am a little bit fuzzy on whether that was '07 or '09. 7 And it's possible one of his staff members called back 8 to clarify. I don't think so. I think the requests 9 were coming directly from Representative Anchia.</p> <p>10 Q. Do you recall any -- was Representative Anchia 11 opposed to HB 218?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware of any other requests from any 14 other members who were opposed to HB 218 for requests 15 for information?</p> <p>16 MR. MORTARA: Again, you may answer with 17 respect to the legislators on this list and not others.</p> <p>18 MS. WESTFALL: Are you taking the position 19 that the Attorney General is representing bill opponents 20 who are not on that list?</p> <p>21 MR. MORTARA: No.</p> <p>22 MS. WESTFALL: Because that seems to be 23 contrary to the position that's been taken in this 24 litigation previously.</p> <p>25 MR. MORTARA: The position the State is</p>	<p style="text-align: center;">107</p> <p>1 those people. She is instead someone who may have had 2 conversations with legislators, and she cannot waive a 3 legislator's privilege for that legislator. That's why 4 she may only answer with respect to the list of names I 5 put in front of her.</p> <p>6 MS. WESTFALL: Okay. We can discuss this 7 further in a break.</p> <p>8 Q. (By Ms. Westfall) Other than 9 Representative Anchia -- first of all, are you following 10 the advice of counsel on this privilege issue?</p> <p>11 A. I'm trying to. Yes.</p> <p>12 Q. Are there any other representatives besides 13 Representative Anchia who contacted the Division about 14 or had any communications with the Division about HB 15 218?</p> <p>16 MR. MORTARA: You may answer that question 17 completely without any limitation whatsoever.</p> <p>18 A. In 2007?</p> <p>19 Q. (By Ms. Westfall) Yes.</p> <p>20 A. 2007 session. I really don't recall anyone 21 other than representative Anchia requesting specific 22 data on House Bill 218.</p> <p>23 Q. Did you have any other communications, or are 24 you aware of any communications between the Division and 25 anyone else in the government outside of the legislature</p>
<p style="text-align: center;">106</p> <p>1 taking is that Ms. McGeehan may not inadvertently or 2 intentionally breach a legislator's privilege, unless 3 that legislator has affirmatively waived the privilege. 4 And since Ms. McGeehan does not hold the privilege, she 5 cannot act to break the privilege. And therefore, she 6 may only answer, not with respect to whether something 7 opposed the bill or supported the bill, but with respect 8 to whether that legislator has affirmatively waived 9 privilege with respect to voter ID issues. That list is 10 in front of her, and she answer with respect to 11 representatives on that list.</p> <p>12 MS. WESTFALL: I just want to represent on 13 the record that your cocounsel early in this litigation 14 indicated that the office of the Texas Attorney General 15 does not represent bill opponents and that we could 16 freely contact bill opponents. So, therefore, which is 17 -- which is related to this very issue, and I take 18 strong issue with your assertion that only individuals 19 on this list are folks that she can testify to. There 20 are other legislators who are bill opponents.</p> <p>21 MR. MORTARA: I don't think there's any 22 inconsistency here, Elizabeth. You may freely contact 23 any legislator you want, who oppose the bill, and ask 24 them if they're willing to waive their privilege. 25 Absolutely, go right ahead. Ms. McGeehan is not one of</p>	<p style="text-align: center;">108</p> <p>1 concerning HB 218?</p> <p>2 A. In state government but not in the state 3 legislature --</p> <p>4 Q. Correct.</p> <p>5 A. -- about 218? I don't recall any.</p> <p>6 Q. Do you recall any communications with the 7 Governor's office?</p> <p>8 A. No.</p> <p>9 Q. Do you recall any conversations with the 10 Lieutenant Governor's office?</p> <p>11 A. No.</p> <p>12 Q. Did the Division receive any request to conduct 13 any analysis of HB 218?</p> <p>14 A. We didn't receive any requests to analyze.</p> <p>15 Q. Did you nevertheless conduct any analysis?</p> <p>16 A. Yes. It's our standard procedure to analyze 17 any election-related bill, and we -- well, attorneys 18 will do a bill analysis so that we can be prepared if 19 that bill is heard in committee.</p> <p>20 Q. Can you describe that bill analysis procedure?</p> <p>21 A. It's usually assigned to an attorney to do a 22 bill analysis, you know, kind of summarize the bill. It 23 goes to the legal director to review. Then it goes to 24 me. Or it would go to me. And then sometimes, you 25 know, depending on our general counsel, sometimes they</p>



<p style="text-align: center;">109</p> <p>1 would want to see those. Sometimes not.</p> <p>2 Q. Can you tell me, generally, what factors the</p> <p>3 analysis considers?</p> <p>4 A. Fiscal impact is a standard, because every</p> <p>5 state agency has to analyze the bill as a fiscal</p> <p>6 impact. We would analyze it whether it required</p> <p>7 submission preclearance, effective date -- those are the</p> <p>8 some of the standard things. But, you know, the heart</p> <p>9 of it was really just a summary of what the bill did.</p> <p>10 Q. With regard to preclearance, does the analysis</p> <p>11 generally include any indication of steps that should be</p> <p>12 taken to ensure that the increase of likelihood that the</p> <p>13 bill would be precleared if enacted?</p> <p>14 A. No. It's really intended to identify,</p> <p>15 basically, that's the beginning of our list to determine</p> <p>16 what needs to get precleared.</p> <p>17 Q. Did the Division receive any requests to</p> <p>18 determine who among registered voters did not possess</p> <p>19 the required forms of ID?</p> <p>20 A. Did the bill possess?</p> <p>21 Q. Did the Division receive any requests to</p> <p>22 determine who among registered voters did not have the</p> <p>23 form of ID?</p> <p>24 MR. MORTARA: Ms. McGeehan, you may not --</p> <p>25 you may -- you may not answer that question with respect</p>	<p style="text-align: center;">111</p> <p>1 A. Yeah. So he's waived.</p> <p>2 Q. I want to know whether you are asserting</p> <p>3 privilege over any part of your answer pursuant to your</p> <p>4 counsel's advice?</p> <p>5 MR. MORTARA: Ms. Westfall, the problem I</p> <p>6 have is Ms. McGeehan does not assert privilege. I'm</p> <p>7 giving her instructions to maintain legislative</p> <p>8 privilege. So she doesn't assert privilege, because</p> <p>9 she's not the holder.</p> <p>10 MS. WESTFALL: I understand.</p> <p>11 MR. MORTARA: So I have a problem with</p> <p>12 your question in that it implies that Ms. McGeehan gets</p> <p>13 to decide, which she does not.</p> <p>14 MS. WESTFALL: I certainly -- I understand</p> <p>15 your position on that. You've made it clear for the</p> <p>16 record. What I want to know is -- what I'm trying to</p> <p>17 elicit from her is whether there's any reason for us to</p> <p>18 consider to moving to compel a response further if there</p> <p>19 is any privileged material to which we are not entitled</p> <p>20 to examine the witness during this deposition.</p> <p>21 MR. MORTARA: Yes. And I have instructed</p> <p>22 her not to answer your question, this particular</p> <p>23 question, with respect to legislators that do not appear</p> <p>24 on the list in front of her, the Lieutenant Governor or</p> <p>25 the Governor. And along as she follows my</p>
<p style="text-align: center;">110</p> <p>1 to legislators that do not appear on this list or their</p> <p>2 staff. You may answer the question with respect to the</p> <p>3 legislators that do appear on this list or their staff</p> <p>4 or anyone else that is not the Lieutenant Governor or</p> <p>5 Governor or legislators that appear not on this list.</p> <p>6 And Ms. Westfall, for clarification,</p> <p>7 my problem is that you've included more in there than</p> <p>8 just what would be on the privilege log.</p> <p>9 MS. WESTFALL: I understand. I'm making</p> <p>10 my record. You are too.</p> <p>11 Q. (By Ms. Westfall) You may answer. Are you</p> <p>12 following the advice of counsel?</p> <p>13 A. Oh, no. I'm trying to think of what the answer</p> <p>14 is. I think that in -- as best as I can remember, I</p> <p>15 believe it was only Representative Anchia that requested</p> <p>16 that kind of information.</p> <p>17 Q. Does any -- any of your answer, in part, are</p> <p>18 you asserting privilege over any information and not</p> <p>19 providing it to us in this deposition?</p> <p>20 MR. MORTARA: I'm instructing you not to</p> <p>21 answer with respect to legislators that do not appear on</p> <p>22 this list or Lieutenant Governor or the Governor.</p> <p>23 A. Okay.</p> <p>24 Q. (By Ms. Westfall) Mr. Anchia is on that list,</p> <p>25 is he not?</p>	<p style="text-align: center;">112</p> <p>1 instruction --</p> <p>2 MS. WESTFALL: Including the Lieutenant</p> <p>3 Governor and Governor?</p> <p>4 MR. MORTARA: Yes.</p> <p>5 MS. WESTFALL: Is that what you just</p> <p>6 said?</p> <p>7 MR. MORTARA: Yes. As far as I know --</p> <p>8 MS. WESTFALL: I don't think the Governor</p> <p>9 is a legislator.</p> <p>10 MR. MORTARA: -- he's maintained a</p> <p>11 privilege with the Governor that would be deliberative</p> <p>12 process if he communicates with the Secretary of State.</p> <p>13 That's the Governor's deliberative process .</p> <p>14 MS. WESTFALL: So this a new privilege</p> <p>15 that's being asserted in this litigation -- I mean in</p> <p>16 this deposition?</p> <p>17 MR. MORTARA: Isn't this the one that we</p> <p>18 just filed briefs on like last night?</p> <p>19 MS. WESTFALL: We just -- I examined the</p> <p>20 witness this morning about privileges that she's</p> <p>21 asserting. Are you now asserting deliberative process?</p> <p>22 MR. MORTARA: Yeah, this is the Governor's</p> <p>23 privilege, deliberative process, not hers. I'm not</p> <p>24 asserting her deliberative process privilege. The</p> <p>25 Governor has a deliberative process privilege. If,</p>





<p style="text-align: center;">113</p> <p>1 hypothetically, the Governor were to ask somebody at the  2 Secretary of State's Office, "Tell me how to do A, B and  3 C," that is within the Governor's deliberative process  4 privilege, as I understand it's being litigated right  5 now. If Mr. Freeman wants to correct me, he can, but I  6 believe that is within that -- and again, I agree with  7 what Mr. Freeman just whispered: The actual facts, the  8 actual information is not privileged. As the example I  9 used when we were off the record earlier, lawyer sends  10 the client e-mail, "We have a problem." Attached to the  11 e-mail is a document. The document is not privileged;  12 it is factual. It must be produced. But the underlying  13 communication is privileged. That's the position the  14 State's taking and will continue to take it unless, off  15 the record, Mr. Freeman wants to tell me that's not the  16 current subject of motions that are subsidiary on the  17 Governor's deliberative process privilege.  18 MS. WESTFALL: No, you can direct the  19 questions to me. I'm aware of the briefing on this  20 case.  21 MR. MORTARA: Okay.  22 MS. WESTFALL: I'm the lead counsel so --  23 we're briefing it.  24 Q. (By Ms. Westfall) Are you aware, Ms. McGeehan,  25 of any attempt to determine the impact of HB 218 on</p>	<p style="text-align: center;">115</p> <p>1 Q. And why did it not?  2 A. We consider that a policy issue that we would  3 not be making recommendations on.  4 Q. And I believe you testified earlier that HB  5 1706 allowed a form of photo ID by county election  6 officials and HB 218 does not; is that correct?  7 A. I'm sure that's right. I just -- I don't see  8 that in here. So I agree that it does not appear to  9 authorize that.  10 Q. Do you know why it wasn't included as a form of  11 ID in HB 218?  12 A. No.  13 Q. Are you aware of any communications regarding  14 the exclusion of this form of photo ID from HB 218?  15 A. No.  16 Q. Are you aware of any communications between the  17 legislature and county election officials regarding HB  18 218?  19 A. No.  20 Q. Did the legislature hold hearings on HB 218?  21 A. I'm pretty sure they did.  22 Q. And were you invited to testify?  23 A. I'm sure I was.  24 Q. Did you accept this invitation?  25 A. I'm you sure I did, yeah.</p>
<p style="text-align: center;">114</p> <p>1 minority voters?  2 A. I'm not aware.  3 Q. Are you aware of any communication about the  4 impact of HB 218 on minority voters?  5 A. I'm sorry?  6 Q. Are you aware of any communications? My first  7 question was about attempts, and you said no. My second  8 question is about communications, about the impact of HB  9 218 on minority voters.  10 A. There was probably testimony at the hearing on  11 that point.  12 Q. Outside of that testimony, are you aware of any  13 other communications concerning the impact of HB 218 on  14 minority voters?  15 A. Not that I recall.  16 Q. In advance of the 2007 legislative session, did  17 the Division or the Secretary of State develop  18 legislative priorities for the session?  19 A. I'm certain we developed a list of cleanup  20 legislation like, you know, we usually do.  21 Q. Were you involved in the development of that  22 agenda?  23 A. Yes.  24 Q. Did the priorities include photo ID?  25 A. No.</p>	<p style="text-align: center;">116</p> <p>1 Q. In what capacity did you testify?  2 A. As a resource witness.  3 MR. MORTARA: Ms. Westfall, we've hit  4 another over-an-hour period. I don't know if you want  5 to do lunch, or Ms. McGeehan wants to do lunch, but I  6 know Chris probably needs a break.  7 MS. WESTFALL: Certainly. We will do  8 lunch. Well, you know what, why don't we get through a  9 little bit more. Can you wait ten more minutes more?  10 Get through the hearing so we can finish up this line.  11 Could you mark this as 284?  12 (Exhibit 284 marked for identification.)  13 Q. (By Ms. Westfall) You've been handed what's  14 been marked 284. Do you recognize this document?  15 A. Yes.  16 Q. What is it?  17 A. It is a transcript of the Senate State Affairs  18 Committee hearing on April 30th.  19 Q. Directing your attention -- and this, for the  20 record, is an excerpt of the hearing transcript focusing  21 on your remarks at that hearing. I'm sure your counsel  22 won't disagree with that representation.  23 If I could turn your attention to Page 99  24 of this transcript, and it is Bates stamped  25 TX_00213364. Do you see that?</p>



<p style="text-align: center;">117</p> <p>1 A. Yes.</p> <p>2 Q. That's where the exchange begins between you</p> <p>3 and Senator Van de Putte. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And I believe you testified in response to</p> <p>6 questions from Senator Van de Putte that in the past</p> <p>7 four years, the Division had not received any complaints</p> <p>8 about voter impersonation; is that correct?</p> <p>9 A. Let me take a second to read it here.</p> <p>10 Q. Certainly. Certainly.</p> <p>11 A. (Witness reading.) Okay. Yes. That's -- I</p> <p>12 reviewed my testimony with Senator Van de Putte.</p> <p>13 Q. And you did -- and you testified that the</p> <p>14 Division had not received any complaints about voter</p> <p>15 impersonation in the previous four years --</p> <p>16 A. Yes.</p> <p>17 Q. -- prior to your testimony; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. Apart from this testimony at the hearing, did</p> <p>20 you or the Division provide anyone with additional</p> <p>21 information about complaints of voter impersonation?</p> <p>22 A. I don't think so.</p> <p>23 Q. And do you see that on the next page, Page 101</p> <p>24 of this exhibit, that you had an exchange with Senator</p> <p>25 Lucio?</p>	<p style="text-align: center;">119</p> <p>1 Ellis?</p> <p>2 A. Yes. I'm going to just read that here real</p> <p>3 quickly.</p> <p>4 Q. Certainly. Let me know when you've had a</p> <p>5 chance to take a look at it.</p> <p>6 A. (Witness reading.) Okay. I've read that.</p> <p>7 Q. Do you see that Senator Ellis asked you whether</p> <p>8 the Division had any discussions about policy</p> <p>9 initiatives to find voter fraud? Right?</p> <p>10 A. Yes.</p> <p>11 Q. And in response you indicated that your office</p> <p>12 for the past couple of years had been focusing on</p> <p>13 implementation of HAVA; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Is it fair to say that voter impersonation was</p> <p>16 not the focus of the Division in 2007?</p> <p>17 A. Yes.</p> <p>18 Q. And the Division had not made research on voter</p> <p>19 impersonation a priority that year?</p> <p>20 A. Right.</p> <p>21 Q. And the Division, as a general matter, has</p> <p>22 limited resources, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And why had the Division decided not to devote</p> <p>25 resources towards the issue of voter impersonation in</p>
<p style="text-align: center;">118</p> <p>1 A. Yes.</p> <p>2 Q. Do you see that in response to a question from</p> <p>3 Senator Lucio, that there's no law that holds election</p> <p>4 judges accountable for failing -- that there is no law</p> <p>5 holding election judges accountable for failing to</p> <p>6 report voter impersonation? Do you see that?</p> <p>7 A. Let me just take a second to read that.</p> <p>8 Q. On Page 101.</p> <p>9 A. (Witness reading.) Yes, I see that.</p> <p>10 Q. Do you have any facts or information for</p> <p>11 believing that the fact that there is no such law</p> <p>12 accounts for the absence of complaints of voter</p> <p>13 impersonation that the Election Division has received?</p> <p>14 A. Complaints from election judges, you mean?</p> <p>15 Q. The fact that there's no law holding election</p> <p>16 judges accountable for not reporting voter</p> <p>17 impersonation?</p> <p>18 A. And whether that -- the lack of that -- not</p> <p>19 having that law, whether that impacts on?</p> <p>20 Q. The number of reported allegations of in-person</p> <p>21 voter impersonation that the Division has received?</p> <p>22 A. I -- I don't think that would have much of an</p> <p>23 impact.</p> <p>24 Q. Turning your attention to Page 104 of Exhibit</p> <p>25 284, do you see that you had an exchange with Senator</p>	<p style="text-align: center;">120</p> <p>1 2007?</p> <p>2 A. We hadn't been directed to. It was no law</p> <p>3 requiring us to study it, or we were trying to comply</p> <p>4 with the laws on the books.</p> <p>5 Q. Was it also because it wasn't much of a</p> <p>6 problem?</p> <p>7 A. I couldn't say that.</p> <p>8 Q. Do you have any facts to indicate anything to</p> <p>9 the contrary?</p> <p>10 MR. MORTARA: Objection, form.</p> <p>11 Q. (By Ms. Westfall) You may answer.</p> <p>12 A. I don't have any facts on that.</p> <p>13 MS. WESTFALL: Thank you. Okay. Let's</p> <p>14 take a break now. I think it's a good breaking point.</p> <p>15 (Lunch recess from 12:36 to 1:36 p.m.)</p> <p>16 Q. (By Mr. Westfall) Before the break, we were</p> <p>17 discussing HB 218. Were you aware of whether any of the</p> <p>18 supporters of HB 218 argued that the bill would prevent</p> <p>19 noncitizens from voting?</p> <p>20 A. I don't recall that.</p> <p>21 Q. Do you recall hearing that Representative</p> <p>22 Brown, Betty Brown stated on the House Floor that the</p> <p>23 bill was designed to keep illegal aliens, noncitizens,</p> <p>24 and other people otherwise not qualified from voting?</p> <p>25 A. I don't recall that.</p>



121

1 Q. Are you aware that Lieutenant Governor Dewhurst  
2 argued in 2007 that photo ID laws would prevent  
3 noncitizens from voting?

4 A. No.

5 Q. And based on your knowledge of the election  
6 code, would to HB 218, if enacted, prevent noncitizens  
7 from voting?

8 A. You know, only if they couldn't present the  
9 forms of ID that are required.

10 Q. In other words, it wouldn't -- to your  
11 knowledge, it would not prevent noncitizens from voting?

12 A. Well, unless a noncitizen was unable to obtain  
13 one of these forms of ID.

14 Q. But that would not be particularized to having  
15 the status of being a noncitizen; is that correct? That  
16 would be related to whether they had ID, allowable ID in  
17 HB 218?

18 A. Right. That was my point. If, as being a  
19 noncitizen, they were unable to obtain one of kinds  
20 forms of ID.

21 Q. Thank you.

22 Are you aware of whether a noncitizen can  
23 obtain a Texas driver's license?

24 A. My understanding is that a person has to have  
25 legal residence in the state, so a noncitizen who is

122

1 here legally could get a driver's license is my  
2 understanding.

3 Q. And is it your understanding that a noncitizen  
4 could obtain a concealed handgun license?

5 A. I don't know.

6 Q. Could a noncitizen obtain a military ID?

7 A. I don't think so, but I don't know the answer  
8 to that.

9 Q. If a noncitizen became registered to vote, a  
10 photo ID requirement for voting would not prevent that  
11 person from voting; is that right?

12 A. Well, again, I think it would relate to what ID  
13 was required, and if a noncitizen was unable to obtain  
14 one of the forms of ID, then that, I guess, would  
15 prevent them from voting.

16 Q. And assuming they were able to obtain one of  
17 those forms of ID, a photo ID would not prevent that  
18 individual from voting; is that right?

19 A. That's right, if they had one of the permitted  
20 forms of ID.

21 Q. There has been deposition testimony in this  
22 case that enacting photo ID law requiring voters to  
23 present photo ID at the polls would deter ineligible  
24 voters from attempting to register to vote. Do you have  
25 any facts or information that would support that

123

1 statement?

2 A. No.

3 Q. Would you agree that if the prevention of  
4 noncitizen voting was a purpose of HB 218, that, in  
5 fact, HB 218 would not be serving that purpose?

6 MR. MORTARA: Objection, calls for  
7 speculation.

8 Q. (By Ms. Westfall) You may answer.

9 A. The question is, if the purpose of 218 was to  
10 prevent noncitizens from voting?

11 Q. Would HB 218, in fact, serve that purpose?

12 A. To the extent that a noncitizen was unable to  
13 obtain one of the forms of ID, then it would help  
14 accomplish that purpose.

15 Q. And not to any other extent; is that right?

16 A. To my understanding, uh-huh.

17 Q. Would you say that there is not a nexus between  
18 photo ID requirements imposed at the polls on election  
19 day and preventing noncitizens from voting on the basis  
20 of their citizenship status?

21 A. I don't recall there being -- at least the  
22 hearings that I was present at, I don't recall there  
23 being a lot of testimony on that. Whether, you know,  
24 the overall concept of having tighter requirements at  
25 the polls, whether that would discourage voter fraud

124

1 overall, you know, that's possible. I don't know.

2 Q. Do you have any facts to support that  
3 supposition?

4 A. Which supposition?

5 Q. The one that you just testified to, that  
6 stricter --

7 A. Having more stricter? No.

8 Q. Are you familiar with the Crawford decision  
9 issued by the U.S. Supreme Court in 2008?

10 A. Yes.

11 Q. Did you review that decision when it was  
12 issued?

13 A. I did. It was a while ago, but I did read it.

14 Q. Was it in 2008 when it was issued?

15 A. Yes.

16 Q. Do you believe it impacted the ability of  
17 states to craft photo ID laws?

18 A. Impacted how? As far as constricted or --

19 Q. Do you think it had any ability or any effect  
20 on the ability of states to craft and enact photo ID  
21 laws?

22 A. I would say yes.

23 Q. How?

24 A. I think that it -- by ruling that there were no  
25 federal constitutional issues, that sort of freed up



<p style="text-align: center;">125</p> <p>1 that as an argument at the state level.</p> <p>2 Q. Do you believe it impacted the ability of</p> <p>3 states covered by Section 5 of the Voting Rights Acts to</p> <p>4 obtain preclearance of a photo ID law?</p> <p>5 A. I think it probably has some bearing, but the</p> <p>6 state, you know, still has to obtain Section 5</p> <p>7 preclearance. It's not -- you still need to go through</p> <p>8 the process, even though the Crawford case was decided.</p> <p>9 Q. What is your understanding of the bearing that</p> <p>10 it has on Section 5?</p> <p>11 A. Well, I don't know that it has a direct impact</p> <p>12 on the Section 5 process.</p> <p>13 Q. When you were at the Elections Division in</p> <p>14 2008, when the opinion was issued, did your change your</p> <p>15 procedures at all, with regard to Section 5 submissions,</p> <p>16 as a result of the Crawford decision?</p> <p>17 A. No.</p> <p>18 Q. After Crawford, do you believe that states</p> <p>19 covered by Section 5 of the Voting Rights Act need not</p> <p>20 conduct any analysis of the impact of photo ID laws on</p> <p>21 minority voters?</p> <p>22 A. No.</p> <p>23 Q. And why do you say that?</p> <p>24 A. I don't think the Crawford case spoke to</p> <p>25 Section 5 issues.</p>	<p style="text-align: center;">127</p> <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. Senate Bill 362 from 2009.</p> <p>4 Q. Do you know who it was introduced by?</p> <p>5 A. Senator Fraser, I believe.</p> <p>6 Q. Could you describe the -- could you describe</p> <p>7 the forms of ID that are allowable under Senate Bill</p> <p>8 362? And I would direct your attention to Page 5 of</p> <p>9 Exhibit 29.</p> <p>10 A. Okay. Okay. It permitted one form of</p> <p>11 identification, as listed in 63.0101A, and 0101A was</p> <p>12 photo identification including driver's license,</p> <p>13 military identification card, U.S. citizenship</p> <p>14 certificate, passport, license to carry a concealed</p> <p>15 handgun, and also a valid identification card that</p> <p>16 contains a person's photograph and is issued by an</p> <p>17 agency of the federal government or of the state</p> <p>18 government.</p> <p>19 And then also permitted, as proof of</p> <p>20 identity, two forms of nonphoto ID, I think, and that</p> <p>21 would include the voter registration certificate,</p> <p>22 official mail from a governmental entity with the</p> <p>23 person's address, a certified copy of birth</p> <p>24 certificate, U.S. citizenship papers, a certified copy</p> <p>25 of a person's marriage or divorce decree, court records</p>
<p style="text-align: center;">126</p> <p>1 Q. Did you ever communicate that view to the State</p> <p>2 Legislature?</p> <p>3 A. No.</p> <p>4 MR. MORTARA: Again, you may answer the</p> <p>5 question with respect to public hearings.</p> <p>6 A. Publicly, yes, I have not.</p> <p>7 MR. MORTARA: And with respect to the</p> <p>8 legislators on this list, but not with respect to</p> <p>9 legislators not on this list.</p> <p>10 MS. WESTFALL: I was examining the witness</p> <p>11 about facts and information she provided in the Election</p> <p>12 Division. Are you still objecting --</p> <p>13 MR. MORTARA: Yes.</p> <p>14 MS. WESTFALL: -- to that question?</p> <p>15 MR. MORTARA: Yes.</p> <p>16 Q. (By Ms. Westfall) Was there a photo ID bill</p> <p>17 introduced in the Senate in 2009?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember the bill number?</p> <p>20 A. No.</p> <p>21 Q. I'm going to hand you what's been previously</p> <p>22 marked as U.S. Exhibit 29.</p> <p>23 You have been handed what's been</p> <p>24 previously marked U.S. Exhibit 29. Do you recognize</p> <p>25 this exhibit?</p>	<p style="text-align: center;">128</p> <p>1 of a person's adoption, name change or sex change,</p> <p>2 identification card issued to a person by the state or</p> <p>3 the United States for obtaining public benefits,</p> <p>4 including veterans' benefits, Medicaid or Medicare, a</p> <p>5 temporary driving permit, pilot's license, library card,</p> <p>6 or a hunting or fishing license.</p> <p>7 Q. Thank you. And to your knowledge, does this</p> <p>8 include student IDs in the list of acceptable photo IDs?</p> <p>9 Drawing your attention to cards issued by agencies or</p> <p>10 institutions or political subdivisions of the state.</p> <p>11 A. Is that under the second list?</p> <p>12 Q. It's under the first.</p> <p>13 A. The first list?</p> <p>14 Q. Uh-huh.</p> <p>15 A. Yeah, I think that would probably include it,</p> <p>16 from a public university.</p> <p>17 Q. And in comparing Exhibit 28, HB 218, with</p> <p>18 Senate Bill 362, does it appear that for the most part,</p> <p>19 the two bills are relatively similar in terms of</p> <p>20 allowable ID?</p> <p>21 A. Yes.</p> <p>22 Q. Did the Secretary of State or Elections</p> <p>23 Division take a public position on Senate Bill 362?</p> <p>24 A. No.</p> <p>25 Q. Were you or the Division involved in the</p>



<p style="text-align: center;">129</p> <p>1 development or drafting of Senate Bill 362?</p> <p>2 A. Not as it was filed.</p> <p>3 Q. After it was filed, were you involved?</p> <p>4 A. Yes.</p> <p>5 Q. So why did you say not as it was filed? What</p> <p>6 did you mean?</p> <p>7 A. Nobody -- this was not -- before it was filed,</p> <p>8 nobody asked us to review it or comment on it on</p> <p>9 anything.</p> <p>10 Q. Thank you for your testimony.</p> <p>11 Was there a time after it was filed that</p> <p>12 the Division was asked to provide any assistance or</p> <p>13 guidance with Senate Bill 362?</p> <p>14 A. This may be covered by the legislative</p> <p>15 privilege.</p> <p>16 MR. MORTARA: You can answer with respect</p> <p>17 to legislators on the list and not with respect to</p> <p>18 others. That's a standing instruction. If you can</p> <p>19 state that, when you're answering the question, that</p> <p>20 will make things move faster and allow Ms. Westfall to</p> <p>21 get through her questions, but otherwise, I can --</p> <p>22 A. I guess the communication that I had -- well,</p> <p>23 there were some communications that were at public</p> <p>24 committee meetings, and any other communications that I</p> <p>25 might have had, I probably can't testify to.</p>	<p style="text-align: center;">131</p> <p>1 Q. Is that how you would describe them? And could</p> <p>2 you tell me what particular sections of the code you</p> <p>3 provided information on, from a subject matter-wise, not</p> <p>4 the particulars.</p> <p>5 A. I think it was generally provisions in</p> <p>6 Chapter 64 concerning what a voter presents and</p> <p>7 technical changes on, you know, a voter who doesn't have</p> <p>8 a certificate and what they have to present and issues</p> <p>9 like that. I'm thinking it was mostly Chapter 64-type</p> <p>10 issues.</p> <p>11 Q. That related to the forms of ID or provisional</p> <p>12 ballots or --</p> <p>13 A. To how ID relates to qualifying a voter. So</p> <p>14 Chapter 64 talks about accepting a voter for voting and</p> <p>15 we provided some information on how to, you know,</p> <p>16 integrate this new requirement into those existing</p> <p>17 requirements.</p> <p>18 Q. Is there any other information that you</p> <p>19 supplied concerning Senate Bill 362?</p> <p>20 MR. MORTARA: And again, with my prior</p> <p>21 instruction.</p> <p>22 THE WITNESS: Uh-huh.</p> <p>23 A. There were again, you know, public hearings.</p> <p>24 Representative Anchia may have asked for additional --</p> <p>25 for data in 2009. I think he did. And I think that's</p>
<p style="text-align: center;">130</p> <p>1 Q. So you're asserting privilege over those other</p> <p>2 communications; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Could you tell me what information you provided</p> <p>5 in response to those inquiries, what factual information</p> <p>6 you provided?</p> <p>7 MR. MORTARA: Ms. McGeehan, what</p> <p>8 Ms. Westfall is getting at is, without disclosing</p> <p>9 anything else about the communication, you can testify</p> <p>10 about what information the Secretary of State had about</p> <p>11 Senate Bill 362. You cannot testify as to whom you</p> <p>12 communicated that information, and if that person's name</p> <p>13 is not on this list. Do you understand?</p> <p>14 THE WITNESS: Uh-huh, right.</p> <p>15 MR. MORTARA: So you can testify as to</p> <p>16 what information the Secretary of State or you or the</p> <p>17 Elections Division had on Senate Bill 362.</p> <p>18 A. During the session, our office provided</p> <p>19 information concerning, again, sort of, technical</p> <p>20 information on how to make certain processes work within</p> <p>21 the election code and how if other sections needed to be</p> <p>22 amended in order to make this law work.</p> <p>23 Q. (By Ms. Westfall) Was that kind of conforming</p> <p>24 technical amendments?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">132</p> <p>1 about it.</p> <p>2 Q. (By Ms. Westfall) When did you provide this</p> <p>3 information to the Senate? At what point in the</p> <p>4 legislative process?</p> <p>5 A. Which -- which information?</p> <p>6 Q. The technical information that you just</p> <p>7 testified about.</p> <p>8 A. That was later in the session, like maybe</p> <p>9 April.</p> <p>10 Q. Was that after --</p> <p>11 A. After it had passed the Senate and it was in</p> <p>12 the House.</p> <p>13 Q. Were there any exchanges of documents between</p> <p>14 you and the -- between the Division and the Senate</p> <p>15 pertaining to those technical corrections or technical</p> <p>16 advice or information?</p> <p>17 A. No, I don't think so.</p> <p>18 Q. How did you communicate that information you</p> <p>19 just testified about?</p> <p>20 A. We met.</p> <p>21 Q. How many people were at that meeting?</p> <p>22 A. I think four.</p> <p>23 Q. Was Legislative Council at that meeting, the</p> <p>24 Texas Legislative Council?</p> <p>25 A. No, I don't -- I don't think so. I don't</p>





133

1 remember, to be honest with you.

2 Q. Was it only staff and legislators?

3 A. They may have been brought in on the phone, the  
4 Legislative Council.

5 Q. Was that the sole meeting that you had with  
6 anyone in the Legislature or any -- strike that.

7 Was that the sole communication that you  
8 had with the Legislature about SB 362?

9 A. No.

10 Q. When was the next communication you had with  
11 the Senate about 362?

12 A. There was probably an earlier privileged  
13 conversation, actually, that I --

14 Q. Was that before the bill was filed?

15 A. No, but it was before the bill was heard in the  
16 Senate.

17 Q. And was that meeting with staff and members of  
18 the Senate?

19 MR. MORTARA: You could say who the  
20 meeting was with. You can identify the participants of  
21 the meeting.

22 THE WITNESS: The category, not the names,  
23 or the names?

24 MR. MORTARA: You can identify the people  
25 by their names, who were present at the privileged

134

1 meeting that you're referring to. You can identify  
2 their names and you can identify when it happened, and  
3 you've already identified the subject matter as being  
4 Senate Bill 362. So you answer Ms. Westfall's question,  
5 which is broadly getting to who was there.

6 Q. (By Ms. Westfall) Who was at the meeting?

7 A. Me, Elizabeth Winn, Senator Fraser, Janice  
8 McCoy, and John Sepehri.

9 Q. Was that the first meeting you had about 362  
10 with anyone in the Senate?

11 A. Yes, I think so.

12 Q. And that was before the Senate heard --

13 A. Heard the bill.

14 Q. -- the bill?

15 A. (Witness nods head yes.)

16 MS. WESTFALL: Would you mark this as 285?  
17 Thank you.

18 (Exhibit 285 marked for identification.)

19 Q. (By Ms. Westfall) You have been handed what's  
20 been marked U.S. 285. Do you recognize this document?

21 A. Yes. I guess it's just showing the bill  
22 history of Senate Bill 362.

23 Q. And turning your attention to the second page,  
24 can you see that the bill was filed in December 2008?

25 A. Yes.

135

1 Q. Ann when was it considered by the Senate?

2 A. Considered for public hearing on March 10th,  
3 2009.

4 Q. Was it your testimony that you met with Senator  
5 Fraser, Ms. McCoy, and Ms. Winn before March 10th?

6 A. Yes.

7 Q. Could you tell me the general nature of that  
8 communication?

9 MR. MORTARA: Ms. McGeehan, you have  
10 already told her the general nature of the  
11 communication, and you're not to say anything beyond it  
12 was about Senate Bill 362.

13 Q. (By Ms. Westfall) Did you provide any  
14 information to Senate Fraser or Ms. McCoy after that  
15 meeting?

16 MR. MORTARA: You may answer that question  
17 yes or no, and to clarify it for the record the reason  
18 is privileged. And if you want to keep --

19 Generally, the reason that I'm saying  
20 these things is privilege. Do you want to keep me  
21 saying that on the record? It's up to you,  
22 Ms. Westfall.

23 MS. WESTFALL: You can have a standing  
24 objection, as long as your witness understands it. But  
25 I'm asking her about factual information, so I think I

136

1 should be able to examine her on that.

2 MR. MORTARA: I think it's a yes or no,  
3 and I'm just trying to make sure that you just answer  
4 the question yes or no.

5 A. Did we provide any other information to --

6 Q. (By Ms. Westfall) Following that meeting before  
7 March 10th, 2009, with Senator Fraser and Ms. McCoy and  
8 Ms. Winn.

9 A. No.

10 Q. Did you provide them with any documentation or  
11 analysis after that meeting?

12 A. I did not.

13 Q. Did Ms. Winn?

14 A. She did not either.

15 Q. Did you have any communications with anyone on  
16 the Governor --

17 A. At least I don't think -- I honestly don't  
18 remember if we did. I don't think we did.

19 Q. Did you have any communications with anyone in  
20 the Governor's Office about Senate Bill 362?

21 A. No.

22 Q. Did you have any communications with anyone in  
23 the Lieutenant Governor's Office about Senate Bill 362?

24 A. No.

25 Q. Did any of the bill's opponents contact you,



ESQUIRE  
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO  
Facsimile: 512.328.8139

Suite 220  
3101 Bee Caves Road  
Austin, TX 78746  
www.esquiresolutions.com

<p style="text-align: center;">137</p> <p>1 outside of the hearing process, about Senate Bill 362?</p> <p>2 A. I don't think so.</p> <p>3 Q. And besides the meeting that you had with</p> <p>4 Ms. McCoy, Senator Fraser, Ms. Winn, before March 10th,</p> <p>5 2009, and this subsequent meeting that you had, was it</p> <p>6 with the same people?</p> <p>7 A. No.</p> <p>8 Q. Who was it with? I'm talking about the meeting</p> <p>9 in April.</p> <p>10 A. That was with -- on the -- that was after it</p> <p>11 passed the Senate, and it was with Chairman Smith's</p> <p>12 staff that was in charge of this bill. His first name</p> <p>13 is -- Travis Richmond is his name. It's Travis</p> <p>14 Richmond, me, John Sepehri. Steven Schar may have been</p> <p>15 there. I don't remember that well. And Elizabeth Winn</p> <p>16 might have been there. I don't remember if she was</p> <p>17 there or not. And that was the conversation where we</p> <p>18 may have brought in Leg Council.</p> <p>19 Q. Were there any other meetings that you had with</p> <p>20 any other legislators or their staff about Senate Bill</p> <p>21 362?</p> <p>22 A. I don't think so.</p> <p>23 Q. And getting back to my previous question: Did</p> <p>24 any of --</p> <p>25 A. Well, let me think. No, there weren't.</p>	<p style="text-align: center;">139</p> <p>1 A. No.</p> <p>2 Q. Did you respond in writing?</p> <p>3 A. Yes, I think we did.</p> <p>4 Q. And in response to my question about whether</p> <p>5 any of the bill's opponents have contacted the Division</p> <p>6 about Senate Bill 362, you have just testified, did you</p> <p>7 not, that Representative Anchia made a request, and your</p> <p>8 counsel advised you not to testify to the extent any of</p> <p>9 the information was privileged, were you asserting</p> <p>10 privilege in that response in part?</p> <p>11 MR. MORTARA: Ms. Westfall, I think my</p> <p>12 instruction speaks for itself.</p> <p>13 Again, Ms. McGeehan, it's not your</p> <p>14 privilege to assert. My instruction to you is: Don't</p> <p>15 answer the question with respect to legislators that do</p> <p>16 not appear on this list.</p> <p>17 A. I think I answered the question.</p> <p>18 Q. (By Ms. Westfall) Okay. Did the Division --</p> <p>19 other than what you have just testified to in terms of</p> <p>20 Representative Anchia, did the Division receive any</p> <p>21 request to determine who among registers voters did not</p> <p>22 possess the forms of allowable ID under Senate Bill 362?</p> <p>23 MR. MORTARA: The same instruction: Only</p> <p>24 with respect to these legislators and not others.</p> <p>25 Q. (By Ms. Westfall) Can you answer?</p>
<p style="text-align: center;">138</p> <p>1 Q. Did any of the bill's opponents contact you or</p> <p>2 anyone in the Division about Senate Bill 362?</p> <p>3 A. I don't remember it, if they did.</p> <p>4 Q. Did the Division receive any request to conduct</p> <p>5 any analysis of Senate Bill 362, other than what you</p> <p>6 have already testified to?</p> <p>7 MR. MORTARA: You may answer that question</p> <p>8 with respect to the legislators on this list, not with</p> <p>9 respect to other legislators.</p> <p>10 A. Representative Anchia, I believe, asked similar</p> <p>11 questions in 2009 that he asked in 2007, and so we</p> <p>12 provided that data to him and to the whole House</p> <p>13 Elections Committee.</p> <p>14 Q. (By Ms. Westfall) What did Representative</p> <p>15 Anchia ask for?</p> <p>16 A. He asked for, you know, voter registration</p> <p>17 numbers. He asked for the number of voters that</p> <p>18 registered with driver's license as opposed to social</p> <p>19 security number. He asked for information about the</p> <p>20 number of referrals we had made to the Attorney</p> <p>21 General's Office for election code for criminal</p> <p>22 violations. He may have asked -- well, there may have</p> <p>23 been one or two other questions on there, but that was</p> <p>24 the big part of it, I think.</p> <p>25 Q. Did he make that request in writing?</p>	<p style="text-align: center;">140</p> <p>1 A. Well, none of these legislators, other than</p> <p>2 Representative Anchia, asked for that information.</p> <p>3 Q. Are you aware of any attempt to determine the</p> <p>4 impact of Senate Bill 362 on minority voters?</p> <p>5 MR. MORTARA: You may answer that</p> <p>6 question, if you can, with respect to communications you</p> <p>7 had with these legislators, public hearings, but not</p> <p>8 with respect to nonpublic communications you had with</p> <p>9 legislators that are not on this list, the Governor's</p> <p>10 Office or the Lieutenant Governor's Office.</p> <p>11 MS. WESTFALL: I would request that you</p> <p>12 withdraw that objection. My question was: Are you</p> <p>13 aware of any attempt to determine the impact of Senate</p> <p>14 Bill 362 on minority voters. I did not ask about</p> <p>15 communications.</p> <p>16 MR. MORTARA: You can answer the question</p> <p>17 yes or no. I think the witness has already testified</p> <p>18 that she --</p> <p>19 A. I mean, at the hearing, there were witnesses on</p> <p>20 both sides on that point. So, I mean, that's what I'm</p> <p>21 aware of. When it was heard on the Senate Floor, I</p> <p>22 believe there were witnesses that testified to that.</p> <p>23 Q. (By Ms. Westfall) Are you aware of -- when you</p> <p>24 say there were witnesses on both sides, you're saying</p> <p>25 there were bill supporters who attempted to determine</p>



<p style="text-align: center;">141</p> <p>1 the impact of Senate Bill 362 on minority voters, or is</p> <p>2 it limited to bill opponents?</p> <p>3 A. I don't know if all the witnesses stated that</p> <p>4 they were opposed to it, but in particular, I'm trying</p> <p>5 to remember the name of the -- generally, I think they</p> <p>6 were affiliated with the bill's opponents.</p> <p>7 Q. Thank you. In advance of the 2009 legislative</p> <p>8 session, did the Division or the Secretary of State</p> <p>9 develop legislative priorities for the session.</p> <p>10 A. For 2009?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. Were you involved in the development of that</p> <p>14 agenda?</p> <p>15 A. Yes.</p> <p>16 Q. Did the priorities include photo ID?</p> <p>17 A. No.</p> <p>18 Q. And why didn't they?</p> <p>19 A. Because we only prepare recommendations on</p> <p>20 technical issues, not policy issues.</p> <p>21 Q. Do you know which committee Senate Bill 362 was</p> <p>22 referred to when it was filed in the Senate?</p> <p>23 A. I think it was heard by Committee of the Whole.</p> <p>24 Q. And what is your understanding of why that</p> <p>25 referral occurred?</p>	<p style="text-align: center;">143</p> <p>1 Q. Do you know whether the Lieutenant Governor</p> <p>2 referred Senate Bill 36 to the Committee of the Whole so</p> <p>3 that he could play an more active role in managing the</p> <p>4 bill in committee?</p> <p>5 A. I don't know.</p> <p>6 MS. WESTFALL: Bear with me for one</p> <p>7 minute. Can we take a short break?</p> <p>8 MR. MORTARA: Sure.</p> <p>9 MS. WESTFALL: Thank you. Let's go off</p> <p>10 the record for one sec.</p> <p>11 (Recess in place from 2:08 to 2:09 p.m.)</p> <p>12 Q. (By Ms. Westfall) Do you know whether the</p> <p>13 Committee of the Whole held a hearing on Senate Bill</p> <p>14 362?</p> <p>15 A. When?</p> <p>16 Q. Whether it did hold a hearing?</p> <p>17 A. Yes, they did.</p> <p>18 Q. Did you give testimony at that hearing?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether the hearing occurred around</p> <p>21 March 10th, 2009?</p> <p>22 A. That sounds right.</p> <p>23 Q. Are you aware -- did you read the transcript or</p> <p>24 hear any reports about that hearing, from any of your</p> <p>25 colleagues or otherwise?</p>
<p style="text-align: center;">142</p> <p>1 A. To be honest, I forget. I know there was a</p> <p>2 reason. I don't really remember exactly what it was.</p> <p>3 Q. Would Senate Bill 362 ordinarily have been</p> <p>4 handled by State Affairs?</p> <p>5 A. Yes, probably.</p> <p>6 Q. And who is in charge in the Senate of referring</p> <p>7 bills to particular committees?</p> <p>8 A. Well, I believe the Lieutenant Governor.</p> <p>9 Q. Do you know whether Senate Bill 362 was</p> <p>10 referred to the Committee of the Whole in order to</p> <p>11 ensure that it would receive expedited consideration by</p> <p>12 the Senate?</p> <p>13 MR. MORTARA: Objection, foundation.</p> <p>14 Q. (By Ms. Westfall) You may answer.</p> <p>15 A. I really don't remember what the precise reason</p> <p>16 was in '09.</p> <p>17 Q. Did it strike you as unusual that it had been</p> <p>18 referred to the Committee of the Whole at the time?</p> <p>19 A. It was unusual.</p> <p>20 Q. Do you know whether the Lieutenant Governor has</p> <p>21 any additional powers in the Committee of the Whole that</p> <p>22 he doesn't have when the bill is in another -- being</p> <p>23 heard before another committee?</p> <p>24 A. I'm really not an expert on the legislative</p> <p>25 process, so I don't want -- I would be guessing.</p>	<p style="text-align: center;">144</p> <p>1 A. I watched portions of it.</p> <p>2 Q. Are you aware that during the hearing, the</p> <p>3 bill's sponsor, Senator Fraser, was asked whether an</p> <p>4 analysis of the racial -- analysis of voters without a</p> <p>5 driver's license had been conducted?</p> <p>6 A. I don't remember that.</p> <p>7 Q. Following the hearing in March 2009, did the</p> <p>8 Division submit any analysis of the racial composition</p> <p>9 of voters who don't have a Texas driver's license to any</p> <p>10 members of the Legislature or the Lieutenant Governor's</p> <p>11 Office?</p> <p>12 A. No.</p> <p>13 Q. Did it surprise you that -- strike that.</p> <p>14 At any time after the hearing, did the</p> <p>15 Division conduct or attempt to conduct an analysis of</p> <p>16 the racial composition of voters who do not have a Texas</p> <p>17 driver's license?</p> <p>18 A. No.</p> <p>19 Q. Was Senate Bill 362 enacted by the Legislature?</p> <p>20 A. No.</p> <p>21 Q. What happened to it?</p> <p>22 A. It passed the Senate. It did not get out of</p> <p>23 the House, as I recall.</p> <p>24 Q. In 2010, did the House Elections Committee hold</p> <p>25 a hearing about voter ID in the interim session?</p>



<p style="text-align: center;">145</p> <p>1 A. I know they held -- in 2010? They probably</p> <p>2 did. I don't remember exactly, to be honest with you.</p> <p>3 Q. Did Representative Smith chair that hearing?</p> <p>4 A. I believe so. Yeah, I'm starting to remember</p> <p>5 it a little bit.</p> <p>6 Q. Did you testify at that panel?</p> <p>7 A. I probably did, yeah.</p> <p>8 Q. Did you testify that the Division had referred</p> <p>9 24 election code cases for possible prosecution in the</p> <p>10 past two years? Does that sound familiar?</p> <p>11 A. That sounds familiar.</p> <p>12 Q. And that was as of 2010; is that correct?</p> <p>13 A. If they had asked for that information, I would</p> <p>14 have pulled what we had, and that sounds about right.</p> <p>15 Q. And of those 24, did you testify that two had</p> <p>16 involved voter impersonation allegations?</p> <p>17 A. You know, I don't have a super clear memory of</p> <p>18 it, but that sounds about right.</p> <p>19 MS. WESTFALL: Could you mark this?</p> <p>20 (Exhibit 286 marked for identification.)</p> <p>21 Q. (By Ms. Westfall) You've been handed what's</p> <p>22 been marked U.S. 286. Do you recognize this document?</p> <p>23 A. Yes. It appears to be an article from the</p> <p>24 Houston Chronicle.</p> <p>25 Q. And if you see at the bottom of Exhibit 286, it</p>	<p style="text-align: center;">147</p> <p>1 to law makers outside of this hearing?</p> <p>2 A. No.</p> <p>3 Q. Were these two allegations the sum total of</p> <p>4 voter impersonation you were aware of in 2010?</p> <p>5 A. I believe so.</p> <p>6 Q. Are you aware of whether either of those two</p> <p>7 voters you testified about in 2010 were ultimately</p> <p>8 convicted of voter impersonation?</p> <p>9 A. I don't know.</p> <p>10 Q. Who would know?</p> <p>11 A. The Attorney General's Office.</p> <p>12 Q. Before the 2011 session, were there any other</p> <p>13 photo ID bills, in addition to the ones to which you</p> <p>14 have testified about today, that you're familiar with?</p> <p>15 A. No, I don't think so.</p> <p>16 Q. Did you have any involvement in any other</p> <p>17 drafting, development, or analysis of any other photo ID</p> <p>18 bills that were introduced in either the House or Senate</p> <p>19 before 2011 that you haven't already testified about?</p> <p>20 A. I don't think so.</p> <p>21 Q. Was a voter ID bill introduced in the Senate in</p> <p>22 2011?</p> <p>23 A. Yes.</p> <p>24 Q. Was it Senate Bill 14?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">146</p> <p>1 refers to your testimony before that panel. Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Could you take a look at that and let me know</p> <p>5 when you've read the sentences?</p> <p>6 A. Yes, I have finished reading it.</p> <p>7 Q. And does it indicate that you had referred 24</p> <p>8 election code cases for possible prosecution in the past</p> <p>9 two years as of the date of this testimony; is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And that two had involved voter impersonation</p> <p>13 allegations; is that correct?</p> <p>14 A. Right.</p> <p>15 Q. And that more than 20 million votes had been</p> <p>16 cast in Texas general elections since 2002; is that</p> <p>17 right?</p> <p>18 A. That's what it says.</p> <p>19 Q. Is this article accurate about what you</p> <p>20 testified to before the panel?</p> <p>21 A. It probably is. I just -- I don't remember,</p> <p>22 you know, everything I testified to on that. But I have</p> <p>23 no reason to think it's not -- not an accurate summary.</p> <p>24 Q. In 2010, did you have any other information</p> <p>25 about voter impersonation allegations that you conveyed</p>	<p style="text-align: center;">148</p> <p>1 Q. Did Senator Fraser introduce it?</p> <p>2 A. Yes.</p> <p>3 Q. He testified in deposition in this case that he</p> <p>4 started to work on Senate Bill 14 on May 31st, 2009.</p> <p>5 Was there a time that you learned about Senate Bill 14</p> <p>6 being developed?</p> <p>7 A. No. I mean, not -- I learned of it when it was</p> <p>8 filed.</p> <p>9 Q. So you did not see a draft of Senate Bill 14</p> <p>10 before it was filed?</p> <p>11 A. No.</p> <p>12 Q. Are you aware of whether the Division provided</p> <p>13 any comments on Senate Bill 14 on drafts before it was</p> <p>14 filed?</p> <p>15 MR. MORTARA: Ms. McGeehan, you may answer</p> <p>16 that question with respect to public comments, with</p> <p>17 respect to communications with legislators on this list,</p> <p>18 but not with respect to Senator Fraser or any legislator</p> <p>19 that is not on this list, the Governor Lieutenant or</p> <p>20 Governor.</p> <p>21 THE WITNESS: Whether there were or were</p> <p>22 not?</p> <p>23 MR. MORTARA: You can answer that question</p> <p>24 whether there or not with respect to these people.</p> <p>25 THE WITNESS: These folks, yeah.</p>



<p style="text-align: center;">149</p> <p>1 A. Then I guess I can only say that there were no</p> <p>2 conversations with these folks.</p> <p>3 Q. (By Ms. Westfall) Thank you.</p> <p>4 As to legislators not on that list, how</p> <p>5 many conversations about Senate Bill 14, before it was</p> <p>6 filed, are you aware of?</p> <p>7 MR. MORTARA: You can answer that</p> <p>8 question.</p> <p>9 A. Before Senate Bill 14 was filed? I'm not aware</p> <p>10 of any.</p> <p>11 Q. (By Ms. Westfall) Are you aware of any written</p> <p>12 communications about Senate Bill 14 between the Division</p> <p>13 and anyone in the Legislature before it was filed?</p> <p>14 A. No.</p> <p>15 Q. Did the Division receive any requests for any</p> <p>16 information related to photo ID before Senate Bill 14</p> <p>17 was filed?</p> <p>18 A. I don't think so.</p> <p>19 Q. Did the Division independently conduct any</p> <p>20 research related to photo ID before Senate Bill 14 was</p> <p>21 filed?</p> <p>22 A. No.</p> <p>23 Q. You have been handed what's been previously</p> <p>24 marked as United States 81. Do you recognize this</p> <p>25 document?</p>	<p style="text-align: center;">151</p> <p>1 this compares to Senate Bill 14 as filed with the forms</p> <p>2 of allowable ID under Senate Bill 32?</p> <p>3 A. Senate Bill 14 requires photo ID, whereas the</p> <p>4 prior versions permitted photo ID or two forms of</p> <p>5 nonphoto ID.</p> <p>6 Q. And would you describe that as a significant</p> <p>7 change in the legislation between 362 and 14?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know why Senate Bill 14 didn't allow for</p> <p>10 use of nonphoto IDs?</p> <p>11 A. No.</p> <p>12 Q. Do you know why Senate Bill 14 only allows for</p> <p>13 the use of unexpired IDs?</p> <p>14 A. No.</p> <p>15 Q. Do you know why the forms of ID have been</p> <p>16 significantly reduced between Senate Bill 362 and Senate</p> <p>17 Bill 14 as filed?</p> <p>18 A. No.</p> <p>19 Q. Are you aware of any forms of ID that the</p> <p>20 Legislature or the bill's sponsor considered including</p> <p>21 in Senate Bill 14 that were not included?</p> <p>22 MR. MORTARA: Ms. McGeehan, you can answer</p> <p>23 that question yes or no. It's fine.</p> <p>24 I'm sorry for interrupting, Ms. Westfall.</p> <p>25 A. No.</p>
<p style="text-align: center;">150</p> <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. It's Senate Bill 14.</p> <p>4 Q. Are you familiar with the provisions of Senate</p> <p>5 Bill 14 as -- and is this -- strike that.</p> <p>6 Is this the version that was filed, do you</p> <p>7 know, as opposed to engrossed?</p> <p>8 A. Right. It looks like the one that was filed.</p> <p>9 Q. Could you review the forms of identification</p> <p>10 provided in the bill, Senate Bill 14 as filed, and let</p> <p>11 me know when you've had chances to do so? I will direct</p> <p>12 your attention to Page 8.</p> <p>13 MR. MORTARA: Ms. Westfall, I wrote the</p> <p>14 number down wrong. What is it?</p> <p>15 MS. WESTFALL: It's 81, previously marked.</p> <p>16 MR. MORTARA: Thank you.</p> <p>17 A. Okay. It requires photo identification</p> <p>18 including -- which includes a driver's license or a</p> <p>19 personal ID card issued by DPS, that has not expired; a</p> <p>20 U.S. military identification card that contains the</p> <p>21 person's photograph and has not expired; a United States</p> <p>22 citizenship certificate that contains the person's</p> <p>23 photograph, or a United States passport that has not</p> <p>24 expired.</p> <p>25 Q. (By Ms. Westfall) And could you compare how</p>	<p style="text-align: center;">152</p> <p>1 Q. (By Ms. Westfall) Are you aware of whether the</p> <p>2 Legislature considered allowing expired forms of ID?</p> <p>3 A. I'm not aware.</p> <p>4 Q. Are you aware of whether the Legislature</p> <p>5 considered allowing forms of ID that had been expired</p> <p>6 two years prior to the election?</p> <p>7 A. I'm not aware.</p> <p>8 Q. Are you aware of any communications with anyone</p> <p>9 in the Legislature about the use of expired forms of</p> <p>10 photo ID?</p> <p>11 A. No.</p> <p>12 Q. If a photo ID is expired but was validly</p> <p>13 issued, why doesn't that prove or doesn't that prove</p> <p>14 that the person is the same person on the ID, in your</p> <p>15 view?</p> <p>16 A. Could you restate that question?</p> <p>17 Q. Certainly. That was -- it's after lunch.</p> <p>18 If a photo ID is expired but was validly</p> <p>19 issued, does that prove the person is the same person</p> <p>20 who appears on the ID?</p> <p>21 A. Yes.</p> <p>22 Q. How often do you have to go to get your</p> <p>23 pictures taken in Texas for your driver's license?</p> <p>24 A. It could be as little as every six years --</p> <p>25 well, the driver's licenses expire in six years. I</p>





<p style="text-align: center;">153</p> <p>1 think if you have good record, it can be extended</p> <p>2 another six years.</p> <p>3 Q. Is it possible also to renew your driver's</p> <p>4 license by mail in Texas?</p> <p>5 A. You can do that once, I think, and then you</p> <p>6 have to go in person the next time.</p> <p>7 Q. And so how long would that be?</p> <p>8 A. I think the maximum would be 12 years.</p> <p>9 Q. Under Senate Bill 14 as filed, how many forms</p> <p>10 of military ID would be acceptable?</p> <p>11 A. Just a military identification card.</p> <p>12 Q. What does that consist of?</p> <p>13 A. It needs to be a current identification card</p> <p>14 issued by the U.S. military to somebody who is in --</p> <p>15 who's in the military.</p> <p>16 Q. Would that include active duty? Inactive</p> <p>17 duty? Family members of military?</p> <p>18 A. I don't think it includes --</p> <p>19 Q. Retirees, et cetera?</p> <p>20 A. You know, it's been a little while since I</p> <p>21 looked at this, and, you know, we were in process -- the</p> <p>22 Secretary of State's Office was in the process of trying</p> <p>23 to educate, you know, and develop training. I don't</p> <p>24 think it included family members, and I think it had to</p> <p>25 include somebody who was a current member of the</p>	<p style="text-align: center;">155</p> <p>1 Q. I see. In November 2011; is that correct?</p> <p>2 A. Right.</p> <p>3 Q. Did you have any communications with anyone in</p> <p>4 the Legislature about which forms of military ID this</p> <p>5 provision would encompass?</p> <p>6 A. I guess to the extent that they're not on this</p> <p>7 list, it would be privileged.</p> <p>8 MR. MORTARA: I think the way Ms. Westfall</p> <p>9 has framed the question, you can answer. It's privilege</p> <p>10 log-type material, so you can answer, with respect to</p> <p>11 all legislators, yes or no.</p> <p>12 THE WITNESS: Okay.</p> <p>13 A. Yes.</p> <p>14 Q. (By Ms. Westfall) When did that communication</p> <p>15 occur?</p> <p>16 A. It occurred after I made a statement at a</p> <p>17 seminar when asked about what constitutes U.S. military</p> <p>18 identification cards.</p> <p>19 Q. Was that after the signing of the bill in May</p> <p>20 of 2011?</p> <p>21 A. Yes.</p> <p>22 Q. You didn't have any communications about what</p> <p>23 would constitute a military ID before the bill was</p> <p>24 signed; is that right?</p> <p>25 A. Correct.</p>
<p style="text-align: center;">154</p> <p>1 military.</p> <p>2 Q. How do you have that? What's the basis of your</p> <p>3 understanding?</p> <p>4 A. Well, you know, there were a lot of questions</p> <p>5 that came up regarding veterans, veteran ID cards, and</p> <p>6 I'm not sure what decision ultimately the Secretary of</p> <p>7 State's Office came down with on that, as far as whether</p> <p>8 that would be included or not.</p> <p>9 Q. Does this bill provide the Secretary of State</p> <p>10 with rule making authority?</p> <p>11 A. I know we had to develop the training</p> <p>12 materials. Yeah, it does have -- there is some rule</p> <p>13 making authority in here.</p> <p>14 Q. And does that rule making authority enable you</p> <p>15 to define the term military ID, or is it with regard to</p> <p>16 other portions of the bill?</p> <p>17 A. I believe it was in regard the other portions</p> <p>18 of the bill.</p> <p>19 Q. So how would military ID be defined?</p> <p>20 A. Well, I mean, that's -- that's the point. When</p> <p>21 we would -- when the Secretary of State would be</p> <p>22 developing the training instructions, we would have to</p> <p>23 figure out a way how to explain that. But that occurred</p> <p>24 after -- or, you know, that was occurring as I was</p> <p>25 leaving.</p>	<p style="text-align: center;">156</p> <p>1 Q. What is a citizenship certificate?</p> <p>2 A. My understanding, that's something a court</p> <p>3 would issue to someone who had obtained citizenship</p> <p>4 status. But again, you know, when I left, it was sort</p> <p>5 of still early days in developing how these items would</p> <p>6 be described and explained.</p> <p>7 Q. Did you have any communications with anyone in</p> <p>8 the Legislature about defining that term or</p> <p>9 understanding what that meant before the bill was signed</p> <p>10 in May of 2011?</p> <p>11 A. No.</p> <p>12 Q. Do you know how much it costs to obtain a</p> <p>13 citizenship certificate?</p> <p>14 A. No.</p> <p>15 Q. Do you know how much it costs to get a</p> <p>16 replacement certificate?</p> <p>17 A. No.</p> <p>18 Q. Do you know how long it takes to get a</p> <p>19 replacement certificate?</p> <p>20 A. A replacement U.S. citizenship certificate?</p> <p>21 Q. Correct. I'm using the shorthand. Thank you.</p> <p>22 A. Yeah. Yeah. No, I don't.</p> <p>23 Q. Do you know how much it costs to obtain a U.S.</p> <p>24 passport?</p> <p>25 A. I got one a couple of years ago, and I think it</p>



<p style="text-align: center;">157</p> <p>1 was about 80 dollars.</p> <p>2 Q. Do you know what documents you have to provide</p> <p>3 to get one?</p> <p>4 A. Generally.</p> <p>5 Q. Could you tell me what they are?</p> <p>6 A. Proof of your birth, I think. I'm not an</p> <p>7 expert on it. I got one myself a couple of years ago.</p> <p>8 Q. Are you familiar with the Georgia and Indiana</p> <p>9 photo ID laws?</p> <p>10 A. Not really.</p> <p>11 Q. Have you ever reviewed those statutes?</p> <p>12 A. No.</p> <p>13 Q. Did you see any, read any, or hear any summary</p> <p>14 of those laws?</p> <p>15 A. I have probably read about those laws.</p> <p>16 Q. Are you aware of whether Senate Bill 14 and the</p> <p>17 Georgia photo ID law are similar or dissimilar?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Did you have any communications with anyone in</p> <p>20 the Legislature or the Lieutenant Governor's Office</p> <p>21 about the Georgia photo ID law?</p> <p>22 A. No.</p> <p>23 MR. MORTARA: You can answer that question</p> <p>24 with respect to everyone.</p> <p>25 THE WITNESS: Okay.</p>	<p style="text-align: center;">159</p> <p>1 legislator about advancing a photo ID law that was</p> <p>2 modeled on Indiana's law?</p> <p>3 MR. MORTARA: You may answer the question</p> <p>4 with respect to the legislators on the list and not</p> <p>5 others.</p> <p>6 A. I'm not aware of any conversation with these</p> <p>7 legislators.</p> <p>8 Q. (By Ms. Westfall) Do you know what the term</p> <p>9 "legislative emergency" means within the Texas</p> <p>10 Legislature?</p> <p>11 A. I don't know the definition.</p> <p>12 Q. Could you tell me generally what it means?</p> <p>13 A. I think it is -- again, I'm sort of guessing,</p> <p>14 but I believe it's when the Governor declares that an</p> <p>15 emergency exists that requires prompt legislative</p> <p>16 action.</p> <p>17 Q. Was photo voter ID declared to be an</p> <p>18 legislative emergency?</p> <p>19 A. I believe it was.</p> <p>20 Q. And when did you first learn about this?</p> <p>21 A. When it was reported in the media.</p> <p>22 Q. Did the Secretary of State or Election Division</p> <p>23 request this designation?</p> <p>24 A. No.</p> <p>25 Q. And did the legislative emergency -- was it</p>
<p style="text-align: center;">158</p> <p>1 Q. (By Ms. Westfall) Are you aware of any</p> <p>2 communications or discussions within the Legislature</p> <p>3 about advancing a photo ID bill that adhered more</p> <p>4 closely to the Georgia law than Senate Bill 14 as filed?</p> <p>5 MR. MORTARA: You can answer that with</p> <p>6 respect to public communications with the legislators on</p> <p>7 this list.</p> <p>8 A. I did not have a conversation with any of these</p> <p>9 legislators on that issue.</p> <p>10 Q. (By Ms. Westfall) Are you aware that the</p> <p>11 Georgia photo ID law allows for the use of expired IDs?</p> <p>12 A. No.</p> <p>13 Q. Are you aware that the Georgia photo ID law</p> <p>14 allows the use of valid employee cards --</p> <p>15 A. No.</p> <p>16 Q. -- issued by a state or federal agency?</p> <p>17 A. No.</p> <p>18 Q. Are you aware that the Georgia photo ID law</p> <p>19 allows for the use of photo ID issued by any entity of</p> <p>20 the United States or Georgia or another state entity?</p> <p>21 A. No.</p> <p>22 Q. And are you familiar with the Indiana photo ID</p> <p>23 law?</p> <p>24 A. No.</p> <p>25 Q. Are you aware of any discussion within the</p>	<p style="text-align: center;">160</p> <p>1 declared sometime in January 2011?</p> <p>2 A. That sounds right.</p> <p>3 Q. Did your office receive any notice of this</p> <p>4 declaration before it occurred?</p> <p>5 A. No.</p> <p>6 Q. Do you know why Governor Perry designated voter</p> <p>7 ID as a legislative emergency?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of any election law having been</p> <p>10 designated as an emergency prior to photo ID in January</p> <p>11 of 2011?</p> <p>12 A. No.</p> <p>13 Q. Do you know what the consequences are</p> <p>14 legislatively when a bill is declared an emergency --</p> <p>15 A. No, I don't.</p> <p>16 Q. Must the Legislature consider the issue within</p> <p>17 the first 60 days of session?</p> <p>18 A. I don't know. That might be the case, but I</p> <p>19 don't know the rules.</p> <p>20 Q. Do you know why Senate Bill 14 needed to be</p> <p>21 considered in the first 60 days of the Legislature?</p> <p>22 A. No. I mean, I can assume it's because it was</p> <p>23 declared an emergency, but I'm not familiar with those</p> <p>24 rules.</p> <p>25 Q. But do you know why there was urgency in</p>



<p style="text-align: center;">161</p> <p>1 considering photo ID --</p> <p>2 A. No.</p> <p>3 Q. -- in 2011? Can you identify, as you're</p> <p>4 sitting here -- well, actually, can you identify</p> <p>5 anything related to the administration of elections in</p> <p>6 the state of Texas that would have necessitated the</p> <p>7 Legislature to consider voter ID within the first 60</p> <p>8 days of the session in 2011?</p> <p>9 A. I don't know of any.</p> <p>10 Q. And you were, at the time, the director of the</p> <p>11 Elections Division, correct?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. So you would probably be the best person to</p> <p>14 know if there was any emergency related to the</p> <p>15 administration of elections that would have prompted</p> <p>16 that; is that right?</p> <p>17 A. Well, you know, that's the Governor's role.</p> <p>18 That's not the Elections Division's role. So I can't</p> <p>19 speak for what was in the Governor's mind.</p> <p>20 Q. Certainly. But you would know what would be</p> <p>21 happening, in terms of voting and elections in the state</p> <p>22 of Texas in 2011 in January; would you not?</p> <p>23 A. To the extent that I ever would be, but I'm</p> <p>24 just saying that as far as the role of declaring or</p> <p>25 determining what's an emergency for legislative</p>	<p style="text-align: center;">163</p> <p>1 the Secretary of State's Office. As to what's happening</p> <p>2 outside, not necessarily.</p> <p>3 Q. Thank you.</p> <p>4 Do you know how Governor Perry made this</p> <p>5 decision to declare it an legislative emergency?</p> <p>6 A. No.</p> <p>7 Q. Was Senate Bill 14 referred to the Committee of</p> <p>8 the Whole Senate?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know why it was referred to the</p> <p>11 Committee of the Whole?</p> <p>12 A. I think it was for similar reasons as '07, but</p> <p>13 I don't know for sure.</p> <p>14 Q. Did you mean '09?</p> <p>15 A. I'm sorry. '09. Yes. '09.</p> <p>16 Q. And do you know what those reasons were?</p> <p>17 A. No.</p> <p>18 Q. In other words, your testimony is that it</p> <p>19 followed the same procedural course that it did in 2009?</p> <p>20 A. That's my understanding, that it followed the</p> <p>21 same course as '09, and was heard by Committee of the</p> <p>22 Whole. I don't know why.</p> <p>23 Q. Did you testify before the Committee of the</p> <p>24 Whole Senate on January 25th, 2011?</p> <p>25 A. Yes. That sounds right.</p>
<p style="text-align: center;">162</p> <p>1 purposes, that's not a role the Elections Division has</p> <p>2 any -- we don't have a role that.</p> <p>3 Q. Certainly. And maybe I'm not being clear in my</p> <p>4 question. I'm asking whether you would be the best</p> <p>5 person to know, as of January 2011, whether there was</p> <p>6 any situation related to the administration of elections</p> <p>7 that would have required emergency action on photo ID?</p> <p>8 A. No, I wouldn't say that. I mean, I think the</p> <p>9 state law puts that authority with the Governor to make</p> <p>10 those determinations.</p> <p>11 Q. And you think the Governor is the person who</p> <p>12 knows the most about election administration in the</p> <p>13 state?</p> <p>14 A. State law says he's the person with the power</p> <p>15 to make those determinations.</p> <p>16 Q. As to emergency designations?</p> <p>17 A. Correct.</p> <p>18 Q. Is that your testimony?</p> <p>19 A. Yes.</p> <p>20 Q. But I'm asking whether -- who is the person</p> <p>21 with knowledge, the most knowledge of the administration</p> <p>22 of elections in the state of Texas in the government?</p> <p>23 Would that be the Elections Division?</p> <p>24 A. As far as what the rules are, that would be --</p> <p>25 yes, that would be probably the Elections Division in</p>	<p style="text-align: center;">164</p> <p>1 Q. Did you appear as a resource witness?</p> <p>2 A. Yes.</p> <p>3 MS. WESTFALL: Could you mark this as 287.</p> <p>4 (Exhibit 287 marked for identification.)</p> <p>5 Q. (By Ms. Westfall) You have been handed what's</p> <p>6 been marked as U.S. Exhibit 287. Do you recognize this?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. It appears to be a transcript of at least some</p> <p>10 of my testimony during the Senate hearing for Senate</p> <p>11 Bill 14.</p> <p>12 Q. And I will represent to you that this is an</p> <p>13 excerpt of the transcript from the Committee of the</p> <p>14 Whole Senate on January 25th, 2011, that contains your</p> <p>15 remarks. And if you could take a look at the exhibit</p> <p>16 and let me know when you've had a chance to review the</p> <p>17 questions and answers to which you were responding, and</p> <p>18 I'll direct you to a page in one moment.</p> <p>19 A. Okay. (Reading documents.) Okay.</p> <p>20 Q. Turning your attention to Page 444 of the</p> <p>21 transcript, which is Texas 00000800, do you see that</p> <p>22 questions were posed from Senator Wendy Davis?</p> <p>23 A. Yes.</p> <p>24 Q. And she was asking you, was she not, questions</p> <p>25 related to persons who filled out a voter registration</p>



165

1 application who indicated neither a driver's license  
2 number nor a social security number; is that correct?

3 A. Right.

4 Q. Do you recall the analysis that you conducted  
5 in that regard?

6 A. I think she was asking for a percentage of  
7 people, I don't think I had that, a percent figure with  
8 me at the time, so I gave her the raw numbers.

9 Q. Do you recall that you had analyzed the numbers  
10 after enactment of the Help America Vote Act, and  
11 applicants were required to supply either a driver's  
12 license number or a social security number, and  
13 analysis of persons who supplied neither. Is that the  
14 analysis that you conducted?

15 A. Yes. It looks -- yes. I answered that, since  
16 January 1st, 2006 through December 31st, 2010, 2.3  
17 million -- oh, no. 2.3 million provided driver's  
18 license number. As far as the number that didn't fill  
19 out either one -- well, you know, there's a couple of  
20 questions in here because we had -- you know, we,  
21 obviously, had data before 2006 as well. And so even  
22 before it was required, people voluntarily provided  
23 driver's license numbers.

24 Q. Right. And the analysis that you just  
25 described concerning persons between January 1st, 2006

166

1 and 2011 who had not supplied either a driver's license  
2 or a social security number when they registered?

3 A. Uh-huh.

4 Q. Who asked you to conduct that analysis?

5 A. I think that was information that we had  
6 previously supplied to Representative Anchia, and so I  
7 think we were updating it for the 2011 session.

8 Q. Could you indicate your testimony as to what  
9 your analysis found in terms of the numbers of people  
10 who had registered without either of those numbers? And  
11 I would direct your attention to Page 445 of the  
12 excerpt, Texas 00000801, the top of the page.

13 A. Oh, okay. Sorry, I almost missed it.

14 So, it looks like I responded that since  
15 2006, the number of people that provided neither one was  
16 34,506.

17 Q. And had Representative Anchia asked you to  
18 update this analysis after Senate Bill 14 was filed, or  
19 did you do it on your own?

20 A. I think we did that on our own.

21 Q. And why did you do it?

22 A. We expected we would get asked.

23 Q. When did you conduct that analysis?

24 A. Shortly before the Senate hearing.

25 Q. So you simply updated the numbers after the

167

1 bill was filed in January and before the hearing; is  
2 that correct?

3 A. Yeah. I think, sort of, to be prepared for  
4 this hearing, we updated those numbers.

5 Q. Did you have any conversations with anyone in  
6 the Legislature, other than Representative Anchia, about  
7 this analysis?

8 A. No.

9 Q. And can you explain why you focused on the date  
10 range of January 1st, 2006 and December 31st, 2010.

11 A. Because prior to that time, they weren't -- it  
12 was not required, so that was sort of a useful  
13 statistic. Since it had been required, this was the  
14 number of folks that weren't able to provide IT.

15 Q. Did you also, as part of that analysis, review  
16 the entire state voter file to determine which voters  
17 had a social security number and which -- or who had  
18 voluntarily provided a social security number?

19 A. Right. Yes.

20 Q. And which voters had voluntarily provided a  
21 driver's license number?

22 A. We did.

23 Q. When did you conduct that analysis?

24 A. I believe we did it in 2009 pursuant -- or  
25 2007, or maybe both, pursuant to Representative Anchia's

168

1 request, and then we updated that in preparation of this  
2 2011 hearing.

3 Q. Did you likewise conduct that analysis in  
4 January 2011?

5 A. Yes.

6 Q. And what number did you find, based on that  
7 analysis, of persons who had not supplied either a  
8 social security number or a driver's license number?

9 A. The number was 690,887.

10 Q. And I believe you just testified that, that  
11 before January 1st, 2006, voter applicants could  
12 voluntarily supply that information.

13 A. Right.

14 Q. So what is the implication of the fact that  
15 voters were only supplying that information voluntarily,  
16 in terms of the numbers of people who are indicated not  
17 to have those forms of ID in the voter file?

18 A. It would mean that there could be people who  
19 were registered to vote before 2006 that didn't provide  
20 a driver's license number or a social security number,  
21 but might, in fact, have them.

22 Q. And as of the date of this hearing, January  
23 25th, 2011, is the sum total of all the analyses that  
24 the Division had undertaken to determine which voters in  
25 the state's voter registration database did not have a



**ESQUIRE**  
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO  
Facsimile: 512.328.8139

Suite 220  
3101 Bee Caves Road  
Austin, TX 78746  
www.esquiresolutions.com

169

1 form of photo ID allowable under Senate Bill 14 or its  
 2 predecessors, is that what you testified to?  
 3 A. Yes.  
 4 Q. You hadn't conducted any other analysis?  
 5 A. Correct.  
 6 Q. Is that correct?  
 7 A. Yes.  
 8 Q. Is there any analysis that you did not publicly  
 9 disclose that you had conducted?  
 10 A. No.  
 11 Q. On the day of the Senate hearing on Senate Bill  
 12 14, did Senator Williams ask you to conduct additional  
 13 analysis of which registered voters did not have  
 14 driver's license? And I would refer you to your  
 15 testimony at Page 446.  
 16 A. Yes.  
 17 Q. What did he ask you to investigate or analyze?  
 18 A. I thought he publicly asked us a question, but  
 19 here on Page 446, I am sort of repeating what he asked.  
 20 And I believe he asked us to see if we could do any  
 21 analysis to get -- to look at these numbers a little  
 22 more closely and compare them against the driver's  
 23 license database to see if we could get a better handle  
 24 on the number of voters that didn't have driver's  
 25 licenses or personal ID numbers.

170

1 Q. Was that the first time that Senator Williams  
 2 had asked you to do that?  
 3 A. Yes.  
 4 Q. Had anyone asked you to do that type of match  
 5 before January 25th, 2011?  
 6 MR. MORTARA: You may not answer that  
 7 question with respect to nonpublic requests made by  
 8 legislators not on the list.  
 9 Q. (By Ms. Westfall) Do you have any testimony?  
 10 A. Nobody on this list asked us to do that before  
 11 this hearing.  
 12 Q. Turning your attention to Page 489, of your  
 13 remarks before the Senate. Tell me when you're there.  
 14 A. Okay. I'm there.  
 15 Q. Do you see Senator Williams asks you some  
 16 questions, halfway through the page?  
 17 A. Okay.  
 18 Q. And is he asking you, or making reference to  
 19 having talked earlier with you about cross-referencing  
 20 driver's license and voter registration? Do you see  
 21 that on to the next page?  
 22 A. Yeah. He asked how it was coming along.  
 23 Q. And he had just asked you earlier in the day?  
 24 A. Yes.  
 25 Q. Is that right?

171

1 A. Right.  
 2 Q. And so he wanted a status report hours later?  
 3 A. Right.  
 4 Q. Is that correct?  
 5 A. Yes.  
 6 Q. And he indicates there he only asked you today;  
 7 is that right?  
 8 A. Right.  
 9 Q. So he's referring to conversations he had with  
 10 you that day?  
 11 A. Correct.  
 12 Q. And in response, you indicated that you were  
 13 having difficulty with matching, is that correct, and  
 14 there were some IT issues?  
 15 A. Yes.  
 16 Q. What were the difficulties you were having in  
 17 conducting that match?  
 18 A. Well, I think we needed to develop what the  
 19 matching criteria was going to be and just comparing the  
 20 data. I mean, we had go through our IT department to,  
 21 you know, set that up. So at this point in time, I  
 22 really had no idea how long that was going to take.  
 23 Q. I see. So in terms of matching criteria, what  
 24 do you mean?  
 25 A. To -- you know, to determine what data fields

172

1 to match on between the voter database and the driver  
 2 database. And, you know, would it be on first name,  
 3 last name, middle name, date of birth, county, address,  
 4 you know, what would be the exact criteria.  
 5 Q. And prior to January 25th, 2011, had you given  
 6 any thought to how you would do that matching criteria?  
 7 A. No.  
 8 Q. Other than the matching criteria, you said  
 9 there were other IT issues involved; is that right?  
 10 A. Right.  
 11 Q. Could you describe those?  
 12 A. Well, and I'm not a technical person, but, you  
 13 know, the format -- the data is in different formats, so  
 14 comparing the SOS data with the DPS data, sometimes  
 15 there are issues on making sure we can match up the  
 16 data. Again, that's not my area of expertise.  
 17 Q. And were you foreseeing that being a problem?  
 18 A. It usually is a problem, so...  
 19 Q. And had you had any communications or meetings  
 20 with the Department of Public Safety, prior to January  
 21 2011, about conducting that type of match?  
 22 A. No.  
 23 Q. Had you had any meetings with DPS about  
 24 matching criteria?  
 25 A. Not on -- the only time we had -- we have met





<p style="text-align: center;">173</p> <p>1 with DPS on matching criteria for purposes of HAVA and</p> <p>2 verifying driver's license numbers for HAVA purposes.</p> <p>3 Q. But for purposes of determining who in your</p> <p>4 voter registration database has driver's licenses, you</p> <p>5 had not?</p> <p>6 A. We had not done that.</p> <p>7 Q. And had you not as of January 25th, 2011 --</p> <p>8 A. Correct.</p> <p>9 Q. -- because you just had received that request</p> <p>10 from Senator Williams that day; is that right?</p> <p>11 A. That's right.</p> <p>12 Q. Was there a time, after January 25th, 2011,</p> <p>13 that you provided Senator Williams, or any other</p> <p>14 legislator or the Lieutenant Governor, with information,</p> <p>15 factual analysis related to matching of the voter</p> <p>16 registration and driver's license database?</p> <p>17 MR. MORTARA: You may answer that</p> <p>18 question.</p> <p>19 A. No.</p> <p>20 Q. (By Ms. Westfall) Do you recall that during</p> <p>21 this hearing, the Senate hearing, you also had a</p> <p>22 colloquy with Senator Davis about whether the Secretary</p> <p>23 of State gathers demographic information about voters by</p> <p>24 race, gender, disability, and age?</p> <p>25 A. I vaguely remember that.</p>	<p style="text-align: center;">175</p> <p>1 A. I explained what current process was and what</p> <p>2 information we had access to, and that if the</p> <p>3 Legislature wanted to establish a process, that we could</p> <p>4 collect it, we'd have to change the voter registration</p> <p>5 application to collect that data.</p> <p>6 Q. And your testimony, in short, was that you were</p> <p>7 able to do Spanish surname analysis; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. And that that was the sum total of what you</p> <p>10 were currently able to do?</p> <p>11 A. Right.</p> <p>12 Q. Was there any other method of identifying the</p> <p>13 race of a voter in the Texas voter database that you did</p> <p>14 not testify about in the Senate hearing on January 25th,</p> <p>15 2011?</p> <p>16 A. No.</p> <p>17 Q. And do you recall that at the conclusion of</p> <p>18 Senator Davis's colloquy with you, she opined that</p> <p>19 information about the impact of Senate Bill 14 on</p> <p>20 minority voters was important for review under Section</p> <p>21 5, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Subsequent to this hearing, did the Division</p> <p>24 undertake any analysis of the impact of Senate Bill 14</p> <p>25 on minority voters?</p>
<p style="text-align: center;">174</p> <p>1 Q. And I'll direct your attention to Page 460, if</p> <p>2 you could take a look at your testimony and let me know</p> <p>3 when you've had an opportunity to review it.</p> <p>4 A. (Reading documents.) Okay.</p> <p>5 Q. How did you respond to Senator Davis's inquiry</p> <p>6 about whether the Secretary of State gathers demographic</p> <p>7 information about voters by race, gender, disability,</p> <p>8 and age?</p> <p>9 A. I explained what data we had, which is gender.</p> <p>10 That used to be a required field on the voter</p> <p>11 registration application. So we have some information</p> <p>12 on gender, but I guess I said since 1995, it was</p> <p>13 optional, so it's not complete. And on age, obviously,</p> <p>14 we have that data, because that's required, birth date</p> <p>15 is required. And then on ethnicity, I explained that we</p> <p>16 didn't collect any information regarding race, and that</p> <p>17 the only tool we had was the Hispanic surname list to</p> <p>18 identify voters with Hispanic surnames.</p> <p>19 Q. And did Senator Davis further ask you how the</p> <p>20 Secretary of State would be able to respond to questions</p> <p>21 about whether Senate Bill 14 disproportionately impacts</p> <p>22 minority voters? Directing your attention to Page 461.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And what was your response?</p>	<p style="text-align: center;">176</p> <p>1 A. Pursuant to a request from the Justice</p> <p>2 Department, we did.</p> <p>3 Q. Prior to that time?</p> <p>4 A. Prior to that time, we did not.</p> <p>5 Q. And why was -- when was that response to the</p> <p>6 Justice Department?</p> <p>7 A. I think we submitted the bill in maybe the</p> <p>8 middle of June or the end of June.</p> <p>9 Q. Was it July?</p> <p>10 A. That sounds right.</p> <p>11 Q. And when did you submit information about the</p> <p>12 impact on minority voters to the Justice Department, to</p> <p>13 the best of your recollection?</p> <p>14 A. Probably August or September.</p> <p>15 Q. And when was the bill signed into law? Was it</p> <p>16 May 2011?</p> <p>17 A. I don't really remember. It probably was. I</p> <p>18 don't remember exactly. Oh, it might be on that list</p> <p>19 of --</p> <p>20 Q. I'm going to hand you what's been previously</p> <p>21 marked as Exhibit 8. You've been handed what's been</p> <p>22 previously marked as U.S. Exhibit 8. Do you recognize</p> <p>23 this document?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>



177

1 A. It looks like the bill history on Senate  
2 Bill 14.

3 Q. Does this refresh your recollection -- or could  
4 you refer to U.S. Exhibit 8 to refresh your recollection  
5 as to when Senate Bill 14 was --

6 A. I think I can, if I can read it right. Yes.

7 Okay. It was signed by the Governor on May 27th.

8 Q. Why did the Division not undertake an analysis  
9 of the racial impact of Senate Bill 14 prior to  
10 receiving a request from the Justice Department, when  
11 Ms. Davis had requested this information of you in  
12 January 2011?

13 A. She requested how could we -- I mean, her  
14 question, I thought, was looking into the future, how  
15 would we be able to analyze the impact on voters if we  
16 didn't collect data on race at the time of voter  
17 registration, and I explained that that would require a  
18 legislative change, and nobody changed the law to  
19 accomplish that.

20 Q. So was it your feeling that you could not  
21 conduct that analysis absent a change in state law?

22 A. We generally don't conduct -- the Secretary  
23 State's Office does not usually conduct investigations  
24 or, sort of, analyses of that sort, as a general rule.

25 Q. But state legislators had requested that

178

1 information of your office, had they not, Representative  
2 Anchia and Senator Davis; is that correct?

3 A. We responded to every request they made.  
4 Nobody asked for that particular data of racial  
5 breakdowns of voters who didn't have driver's licenses  
6 or personal identification cards.

7 Q. Is it your testimony Ms. Davis was not seeking  
8 that information?

9 A. That's not how I understood her question and  
10 that's not how I answered her question.

11 Q. Okay.

12 A. She never followed up.

13 Q. I see. But you testified earlier that you had  
14 involvement in hundreds and hundreds of Section 5  
15 submissions, correct?

16 A. Yes.

17 Q. So did you that believe you would ultimately,  
18 if the law was enacted and signed by the Governor, need  
19 as part of the Section 5 process to provide that  
20 information to the Justice Department?

21 A. We didn't include in it our initial submission,  
22 so I guess we didn't feel like it was required.

23 Q. And why not?

24 A. I think we provided, sort of, the standard  
25 information in our initial submission regarding number

179

1 of registered voters, and I don't think we felt like we  
2 possessed the information as to how -- how many voters  
3 really didn't have the forms of ID and how to break them  
4 down by race.

5 Q. Are you familiar with the amendments offered in  
6 the Senate during consideration of Senate Bill 14?

7 A. Somewhat.

8 MS. WESTFALL: Could you mark this as 47.

9 Q. (By Ms. Westfall) You have been handed what's  
10 been previously marked as Exhibit 47. Do you recognize  
11 this document?

12 A. Yes. Senate Journal from January 26th.

13 Q. Turning your attention to Page 130 of this  
14 document, do you see it references an amendment offered  
15 by Senator Ellis?

16 A. Yes.

17 Q. Did Senator Ellis introduce an amendment that  
18 would have required the Secretary of State to conduct a  
19 study that would have included information about the  
20 number of eligible voters who were from prevented from  
21 voting or had to vote provisionally because of lack of  
22 ID and an analysis of those voters based on race?

23 A. Okay. That's what this says.

24 Q. Did the Division -- are you aware of this  
25 amendment?

180

1 A. I don't remember this amendment. It was  
2 probably offered during deliberation. I don't think it  
3 got approved. Maybe it did.

4 Q. Turning your attention to the bottom of  
5 Page 130, do you see that it indicates --

6 A. It was tabled.

7 Q. -- it was tabled?

8 A. Okay.

9 Q. And does that mean it was not approved; is that  
10 right?

11 A. That's my understanding.

12 Q. Did the Division take a position on this  
13 amendment?

14 A. No.

15 Q. Were you involved in any communications  
16 regarding this amendment?

17 A. No.

18 Q. Do you know why this amendment was tabled?

19 A. No.

20 Q. Are you aware of any concerns or communications  
21 that such a study, as required by the Floor Amendment  
22 Number 30, would show that minorities are  
23 disproportionately impacted by Senate Bill 14?

24 A. We never saw this. I think this was just  
25 offered during the Floor debate, so it never --



181

1 Q. Uh-huh. Okay.

2 A. So I'm not familiar with it.

3 Q. Fair enough. Thank you for your testimony.

4 I believe you testified earlier that you  
5 conducted Spanish surname analysis as a matter of  
6 course; is that right?

7 A. Right.

8 Q. Is there a reason why the Division did not  
9 conduct such an analysis, Spanish surname analysis of  
10 the voters without driver's licenses between January  
11 2011 and the time you provided it to the Justice  
12 Department in the fall of '11?

13 A. Well, I mean, one reason is nobody asked us to.

14 Q. Are there any other reasons?

15 A. We don't -- you know, as a general policy,  
16 Elections Division does not generally use that list for  
17 any purpose other than sending out that notice. It's  
18 not something we use to qualify voters or -- and then as  
19 we discussed earlier this morning, we send it out to  
20 county officials for purposes of helping them place  
21 Spanish-speaking poll workers, but...

22 Q. Is it your testimony that in 2011, not a single  
23 bill opponent ever asked you for that information?

24 A. I don't recall any of these people --

25 MR. MORTARA: Yeah, just this list.

182

1 A. Yeah. I don't recall any of these legislators  
2 asking for that information.

3 Q. (By Ms. Westfall) Are you aware of any  
4 communications regarding Senate Bill 14 and Spanish  
5 surname analysis?

6 MR. MORTARA: You can answer that question  
7 with respect to everyone in the world.

8 A. During session or --

9 Q. (By Ms. Westfall) In 2011. Before the bill --  
10 strike that.

11 Do you recall any such communications  
12 involving Senate Bill 14 and Spanish surname analysis  
13 between January 1st, 2011 and when the bill was signed  
14 in May 2011?

15 A. No.

16 MS. WESTFALL: Sure. Let's take a break.

17 (Recess from 3:02 to 3:27 p.m.)

18 Q. (By Ms. Westfall) When did the Senate pass  
19 Senate Bill 14?

20 A. I don't remember. It's probably on this list.

21 Q. You can refer back to Exhibit 8.

22 A. It looks like was January 26th; is that right?

23 Q. Was it passed within about two weeks of having  
24 been filed in the Senate?

25 A. Yeah. And it was filed on January 12th, and it

183

1 passed on January 26th.

2 Q. Is it fairly unusual to pass a bill in two  
3 weeks in January at the beginning of a session?

4 A. I don't really know, to be honest.

5 Q. Do you recall other bills that were passed that  
6 early in the Senate in January?

7 A. I don't recall any, but I don't track them all  
8 either.

9 Q. Can you recall any other election bill other  
10 than Senate Bill 14 that was part of a Governor's  
11 emergency call?

12 A. I believe there were several issues in that  
13 emergency call.

14 Q. But I'm referring you to -- do you recall any  
15 emergency call that included another election bill in  
16 previous sessions?

17 A. No.

18 Q. Did you testify before the House select  
19 committee on voter identification and voter fraud on  
20 Senate Bill 14?

21 A. Yes.

22 Q. Did you testify on March 2, 2011?

23 A. I don't remember the date. I don't see it on  
24 here. I guess it was probably a different bill. It was  
25 probably maybe the House -- well, I don't remember.

184

1 Q. After the Senate passed Senate Bill 14, did it  
2 go to the house?

3 A. Yes.

4 MS. WESTFALL: Could you please mark this  
5 as 288?

6 (Exhibit 288 marked for identification.)

7 Q. (By Ms. Westfall) Do you recognize this  
8 document?

9 A. Yes. It appears to be a transcript of  
10 testimony before the Select Committee on Voter  
11 Identification and Voter ID fraud on March 1st.

12 Q. And I'll represent to you that this is an  
13 excerpt of the transcript pertaining to your remarks --

14 A. Okay.

15 Q. -- at that hearing.

16 A. Okay.

17 Q. Did you appear as a resource witness?

18 A. Yes.

19 Q. And turning your attention to Page 290 of the  
20 testimony. Are you there?

21 A. Yes.

22 Q. Do you see that there's a question from an  
23 unidentified representative as to whether you've done a  
24 match to determine whether folks in the drivers -- in  
25 the voter registration database have driver's licenses?



<p style="text-align: center;">185</p> <p>1 A. Let me take just a quick second to read.</p> <p>2 Q. Certainly.</p> <p>3 A. (Witness reading.) Okay. Sorry.</p> <p>4 Q. Sure. No, that's okay.</p> <p>5 Did you testify in response to the</p> <p>6 question about whether a match had been done with the</p> <p>7 voter registration database and the DPS driver's license</p> <p>8 database to determine who did not have driver's</p> <p>9 licenses?</p> <p>10 A. Yes.</p> <p>11 Q. And what was your response to that question?</p> <p>12 A. My response was that we were looking into that</p> <p>13 at the time, so on March 1st, we were still working on</p> <p>14 trying to make that comparison.</p> <p>15 Q. And you had -- you testified earlier that you</p> <p>16 had been asked by Senator Williams on January 25th,</p> <p>17 2001, to engage in that match and comparison; is that</p> <p>18 correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And can you describe the process that you</p> <p>21 undertook in January to attempt to conduct that match?</p> <p>22 A. We -- we were looking at what would be the</p> <p>23 matching criteria, you know, how tight of a match would</p> <p>24 it be, and those sorts of issues.</p> <p>25 Q. And as of March 1st, that process was still</p>	<p style="text-align: center;">187</p> <p>1 A. Well, I don't know that we were prohibited, it</p> <p>2 was -- but it would be up to -- it would be up to the</p> <p>3 executive management to be the ones to release something</p> <p>4 like that.</p> <p>5 Q. And who by name is that person or persons?</p> <p>6 A. That would be Coby Shorter, who was -- who is</p> <p>7 the deputy, and John Sepehri, who's the general counsel.</p> <p>8 Q. When did you, from your perspective, complete</p> <p>9 this matching analysis, what date?</p> <p>10 A. I don't really remember exactly when.</p> <p>11 Q. Was in it the month of February?</p> <p>12 A. It could have been February or March, but I</p> <p>13 don't remember exactly.</p> <p>14 Q. Was it before or after this hearing on March</p> <p>15 1st?</p> <p>16 A. I don't remember.</p> <p>17 Q. Were you -- does your testimony here on March</p> <p>18 1st on Page 290 refresh your recollection as to when you</p> <p>19 completed the match?</p> <p>20 A. I can't really tell if we had completed it here</p> <p>21 or not.</p> <p>22 Q. It's conceivable that you had done the match in</p> <p>23 February, but it was not authorized to be released at</p> <p>24 that time; is that right?</p> <p>25 A. Right. And when I say "authorized to be</p>
<p style="text-align: center;">186</p> <p>1 pending, and you haven't been able to determine the</p> <p>2 universe of voters without driver's licenses; is that</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And why the delay in conducting the match?</p> <p>6 A. I think we were looking for sort of, you know,</p> <p>7 guidance on what matching criteria to use.</p> <p>8 Q. Who were you seeking that guidance from?</p> <p>9 A. Probably from our executive -- from executive</p> <p>10 management within Secretary of State's Office.</p> <p>11 Q. And who would that be specifically?</p> <p>12 A. That would be our deputy secretary and our</p> <p>13 general counsel.</p> <p>14 Q. Is it your testimony that they weren't</p> <p>15 providing you with the guidance that you needed to</p> <p>16 conduct the match?</p> <p>17 A. I think we were sort of, you know, looking for</p> <p>18 the -- for them to say yes, okay, this is fine, let's</p> <p>19 release it.</p> <p>20 Q. I see. So you had conducted the analysis, but</p> <p>21 you hadn't released it; is that correct?</p> <p>22 A. We hadn't sort of had it approved or, you know,</p> <p>23 okayed to release outside the office.</p> <p>24 Q. Who in particular did not let you release that</p> <p>25 information?</p>	<p style="text-align: center;">188</p> <p>1 released," you know, I don't know if our executive</p> <p>2 management had a chance to review it, if they felt</p> <p>3 confident about it.</p> <p>4 Q. Was there concerns about the accuracy of the</p> <p>5 match?</p> <p>6 A. I think so. I think they wanted to make sure</p> <p>7 that anything we released was accurate.</p> <p>8 Q. Was there any concern about the number of</p> <p>9 voters who were unmatched and releasing that information</p> <p>10 to the public?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Was the number that was in that analysis about</p> <p>13 800,000 people that were unmatched?</p> <p>14 A. I don't really remember. I was thinking it was</p> <p>15 around 700,000, but I don't have a clear memory of that.</p> <p>16 Q. Was there any concern you're aware of that</p> <p>17 releasing that number in February of 2007 could</p> <p>18 potentially jeopardize enactment of the bill?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Do you know whether anyone directed executive</p> <p>21 management not to release that information?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Do you know whether that match and those</p> <p>24 numbers changed significantly from February 2011 to the</p> <p>25 time that you released that information to the Justice</p>



<p style="text-align: center;">189</p> <p>1 Department in the fall of 2011?</p> <p>2 A. I don't think they did.</p> <p>3 Q. And to your knowledge, did you learn after the</p> <p>4 match was conducted in February or March, 2011, of any</p> <p>5 errors that caused there to be a change in the analysis?</p> <p>6 A. Between March --</p> <p>7 Q. And whenever -- you testified -- I believe you</p> <p>8 testified that this match was probably conducted in</p> <p>9 February or March 2011; is that right?</p> <p>10 A. Right.</p> <p>11 Q. And did you become aware, subsequent to that</p> <p>12 time, of any errors in the analysis or the matching</p> <p>13 process, or was it basically final as of that date,</p> <p>14 although not released?</p> <p>15 A. I don't think we changed it much from what we</p> <p>16 did. I mean, I think there were some judgments as to</p> <p>17 which criteria to use, and I don't think we changed that</p> <p>18 much from when we did pull it to send to the Justice</p> <p>19 Department.</p> <p>20 Q. Did you at any time between the time that you</p> <p>21 did that match -- and you believe it was February or</p> <p>22 March of 2011?</p> <p>23 A. That sounds about right.</p> <p>24 Q. Did you conduct a Spanish surname analysis on</p> <p>25 that information, those unmatched voters?</p>	<p style="text-align: center;">191</p> <p>1 MR. MORTARA: Specifically about the</p> <p>2 Court's order, Elizabeth. The Court's order says the</p> <p>3 information is not privileged. The analysis exists.</p> <p>4 What I understand the Court's order to mean is that we</p> <p>5 must produce it to you if it exists, not that we have to</p> <p>6 tell you with whom it was shared. That is exactly what</p> <p>7 the last two sentences of that order means. We disagree</p> <p>8 about that.</p> <p>9 Don't answer the question except with</p> <p>10 respect to these legislators.</p> <p>11 A. We didn't release it to any of those</p> <p>12 legislators.</p> <p>13 Q. (By Ms. Westfall) Would it have been</p> <p>14 relatively easy to do a Spanish surname analysis on that</p> <p>15 list of 700,000 voters in February and March of 2011?</p> <p>16 A. Yes. I mean, I say that. Our IT department</p> <p>17 might not agree with that.</p> <p>18 Q. Fair point. Did you or the Division play any</p> <p>19 role in the consideration by the Conference Committee of</p> <p>20 Senate Bill 14?</p> <p>21 A. No, not in the Conference Committee.</p> <p>22 Q. Are you aware of any changes made to provisions</p> <p>23 of Senate Bill 14 in Conference Committee that involved</p> <p>24 voter education?</p> <p>25 A. I don't recall that. It may be the case, but I</p>
<p style="text-align: center;">190</p> <p>1 A. Not during the session. We did that after we</p> <p>2 provided it to the Justice Department.</p> <p>3 Q. Did you have any reason to believe based on the</p> <p>4 universe of voters you had identified, the 700,000</p> <p>5 voters, that they would be disproportionately minority</p> <p>6 voters?</p> <p>7 A. No.</p> <p>8 Q. Who was aware of the fact that that analysis</p> <p>9 had occurred in February or March 2011 besides you in</p> <p>10 your office?</p> <p>11 A. In my office within the Secretary of State's</p> <p>12 Office?</p> <p>13 Q. Yes.</p> <p>14 A. It would have been me and our voter</p> <p>15 registration director, who is in the Elections Division,</p> <p>16 and then in our IT department, one of the programmers,</p> <p>17 and his supervisor, and our IT director, and then the</p> <p>18 Deputy Secretary of State and the general counsel.</p> <p>19 Q. Did you at any time provide that analysis from</p> <p>20 February or March of 2011 to anyone in the legislature?</p> <p>21 MR. MORTARA: You may answer that question</p> <p>22 only with respect to the legislators listed on the</p> <p>23 sheet.</p> <p>24 MS. WESTFALL: Wait a minute. It's</p> <p>25 providing factual information to the legislature --</p>	<p style="text-align: center;">192</p> <p>1 didn't remember that changing in Conference Committee.</p> <p>2 Q. Was there a provision removed in conference</p> <p>3 that would have targeted voter ed -- voter education,</p> <p>4 pardon me, to low-income and minority voters?</p> <p>5 A. I don't remember that. That may have been -- I</p> <p>6 mean, I don't dispute it. I don't have a clear memory</p> <p>7 of that.</p> <p>8 Q. Do you have any reason to believe that voters</p> <p>9 without allowable forms of ID under Senate Bill 14 are</p> <p>10 disproportionately low-income or minor voters?</p> <p>11 A. I do not.</p> <p>12 Q. Did the -- strike that.</p> <p>13 Did the Division provide any data or</p> <p>14 information to any member of the Conference Committee</p> <p>15 about voter education to low-income voters?</p> <p>16 A. No.</p> <p>17 Q. Was the Conference Committee report adopted by</p> <p>18 both chambers?</p> <p>19 A. Yes.</p> <p>20 Q. I'm going to hand you what has been -- whoops,</p> <p>21 sorry. You've been handed what's been previously marked</p> <p>22 as U.S. 5. Do you recognize this?</p> <p>23 A. Yes.</p> <p>24 Q. What is it?</p> <p>25 A. This is the signed enrolled version of Senate</p>





<p style="text-align: center;">193</p> <p>1 Bill 14.</p> <p>2 Q. Turning your attention to the list of allowable</p> <p>3 IDs, do you see that at Page 9?</p> <p>4 A. Yes.</p> <p>5 Q. Could you take a look at the allowable forms of</p> <p>6 ID and let me know when you've had a chance to do so?</p> <p>7 A. Yes.</p> <p>8 Q. Can you describe for me the forms of ID that</p> <p>9 are different in the engrossed version of the bill,</p> <p>10 Exhibit 5, than in the filed bill?</p> <p>11 A. I believe that the difference is that a new</p> <p>12 form of ID was authorized and it created an election</p> <p>13 identification certificate that would be issued by the</p> <p>14 Department of Public Safety. I think that's the only</p> <p>15 change. And maybe the expiration date. I don't know if</p> <p>16 that's the same as in the original bill as to when -- I</p> <p>17 don't remember. I think that's the main change.</p> <p>18 Q. Do you know whether the license to carry a</p> <p>19 concealed handgun was added as an allowable form of ID?</p> <p>20 A. Yeah. But I thought that got added in the</p> <p>21 Senate, but maybe not.</p> <p>22 Q. Do you know the circumstances by which the</p> <p>23 license to carry a concealed handgun were included in</p> <p>24 Senate Bill 14?</p> <p>25 A. No.</p>	<p style="text-align: center;">195</p> <p>1 Q. Have you -- were you aware of any concern that</p> <p>2 failure to include these forms of ID, notwithstanding</p> <p>3 their inclusion in previous bills, could</p> <p>4 disproportionately impact minority voters?</p> <p>5 A. Not including student IDs? No.</p> <p>6 Q. Any concern that it might create an appearance</p> <p>7 that the law was enacted with a discriminatory purpose</p> <p>8 to remove that form of ID from the bill?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of any analysis to determine the</p> <p>11 effect of excluding student IDs as a form of allowable</p> <p>12 ID under Senate Bill 14?</p> <p>13 MR. MORTARA: Again, Ms. McGeehan, for all</p> <p>14 these questions, are you aware, but please keep in mind</p> <p>15 not to give testimony about legislators, Governor's</p> <p>16 office, Lieutenant Governor's office, not appearing on</p> <p>17 the list.</p> <p>18 A. I'm not aware of any communications with these</p> <p>19 legislators, general public, not making any comments as</p> <p>20 to the other legislators that haven't waived their</p> <p>21 privilege, and the Governor's office and Lieutenant</p> <p>22 Governor's office on student IDs in any studies.</p> <p>23 Q. (By Ms. Westfall) Do you know why tribal ID</p> <p>24 was not included as an allowable form of ID in Senate</p> <p>25 Bill 14?</p>
<p style="text-align: center;">194</p> <p>1 Q. Do you know the racial composition of persons</p> <p>2 who hold those licenses?</p> <p>3 A. No.</p> <p>4 Q. Have you had any conversations or</p> <p>5 communications about holders of those licenses might be</p> <p>6 disproportionately White?</p> <p>7 MR. MORTARA: Ms. McGeehan, you may answer</p> <p>8 that question with respect to everybody in the entire</p> <p>9 world except legislators, Lieutenant Governor and his</p> <p>10 staff, Governor and his staff, legislative staff not</p> <p>11 appearing on this list.</p> <p>12 A. I have not heard any conversations on that with</p> <p>13 any of these legislators or any other people other than</p> <p>14 the legislators not on the list or the Governor's office</p> <p>15 or Lieutenant Governor.</p> <p>16 Q. (By Ms. Westfall) Do you know why Senate Bill</p> <p>17 14, as engrossed, did not allow the use of student IDs?</p> <p>18 A. No.</p> <p>19 Q. Were student IDs allowed as an allowable form</p> <p>20 of ID in previous iterations of photo ID in Texas?</p> <p>21 A. I believe that we saw it in the 2009 bill.</p> <p>22 Q. Do you know what had changed between 2009 and</p> <p>23 2011 that caused the legislature to remove that</p> <p>24 provision?</p> <p>25 A. I don't know.</p>	<p style="text-align: center;">196</p> <p>1 A. No.</p> <p>2 Q. Was it in the -- is it in the Georgia photo ID</p> <p>3 of law that tribal ID --</p> <p>4 A. I don't know. I don't know.</p> <p>5 Q. How did the exception for persons with</p> <p>6 disabilities come to be included in Senate Bill 14?</p> <p>7 MR. MORTARA: Objection, foundation.</p> <p>8 Q. (By Ms. Westfall) You may answer.</p> <p>9 A. I'm not sure if I remember all the -- you know,</p> <p>10 all the iterations of that.</p> <p>11 Q. I'll turn your attention --</p> <p>12 A. Okay.</p> <p>13 Q. -- to the first page of the Act, if you want to</p> <p>14 review it, and let me know when you've had a chance to</p> <p>15 take a look at it.</p> <p>16 A. (Witness reading.) Right. Yeah. This is how</p> <p>17 it ended up, but I couldn't really explain how this got</p> <p>18 here.</p> <p>19 Q. What was the purpose of this provision?</p> <p>20 A. I believe it was to exempt persons with</p> <p>21 disabilities from the requirement of presenting a photo</p> <p>22 ID, and they would have to make application with the</p> <p>23 voter registrar to prove that up and obtain the</p> <p>24 exemption.</p> <p>25 Q. Was this provision in the filed bill?</p>



197

1 A. I don't think so.

2 Q. And at whose request was this provision added?

3 A. I don't know -- or I don't remember.

4 Q. Can you describe the provisions of Senate Bill  
5 14 as engrossed pertaining to administration of the ID  
6 requirement at the polls?

7 A. Explain how it would be administered at the  
8 polls?

9 Q. As required by the bill.

10 A. The new requirement bill?

11 Q. Yes.

12 A. It would -- I believe, as best I can remember,  
13 and of course, this is somewhat qualified, because the  
14 Secretary of State is probably still in the process of,  
15 you know, fully developing some of these processes, but  
16 essentially, all voters who voted in person who had not  
17 received the disability exemption and who were not over  
18 the age of 70, I think as of the date of this bill,  
19 would be required to present one of these forms of photo  
20 identification.

21 If they didn't, then they could vote a  
22 provisional ballot, and they would have a certain amount  
23 of time to go back to the voter registrar's office and  
24 present after -- after they voted, they could go to the  
25 voter registrar's office and present one of these forms

198

1 of ID later, within five days or something like that.

2 There were -- I believe there was also two  
3 sort of exemptions for voters that had a religious  
4 objection. I may have to refresh my memory on this.

5 Q. Certainly.

6 A. (Witness reading) Okay. Yeah. They could --  
7 they -- they -- they would vote a provisional ballot and  
8 then if they came in I believe after the election and  
9 executed an affidavit stating that they had either a  
10 religious objection to being photographed or that they  
11 had, you know, been a victim of a natural disaster, and  
12 because of that natural disaster, they didn't have any  
13 identification.

14 Q. So when you talk about administration of the ID  
15 requirement at the polls, are you talking about the --  
16 what the Secretary of State and Election Division  
17 promulgated in terms of rules and procedures, or are you  
18 talking about the bill itself?

19 A. Just then I was, I guess, talking about the  
20 basic requirement. The bill also requires the Secretary  
21 of State to do training of poll workers, training of  
22 voters. I think we had to develop rules on -- to give  
23 guidance to poll workers on how to accept voters  
24 regarding how similar the name on the photo ID has to be  
25 to the name on the list of registered voters.

199

1 Q. Do you know why Senate Bill 14 did not provide  
2 more specificity about how poll workers should determine  
3 whether a voter had presented an ID that proved their  
4 identity?

5 A. No.

6 Q. Do you think the bill should have provided more  
7 specificity in that regard?

8 A. Well, I guess from the Secretary of State's  
9 point of view, it would have been nice if they had done  
10 that. It would have been one less thing that the  
11 Secretary of State's Office had to do.

12 Q. And do you believe that it's a very important  
13 part of the bill to determine -- to instruct poll  
14 workers as to how to administer this ID requirement at  
15 the polls?

16 A. Yes.

17 Q. Because if they don't understand how to  
18 determine someone's identity, it could be misapplied and  
19 disenfranchise a voter; isn't that right?

20 A. Yes.

21 Q. I believe you testified about the provisional  
22 ballot requirements. In essence, the provisional ballot  
23 requirements do not provide much in the way of  
24 mitigation of the photo ID requirements; isn't that  
25 right?

200

1 A. Well, you know, I think that's kind of an  
2 opinion question. Some folks would argue there's more  
3 protection, because you can come back in and fix it.  
4 Whereas under current law, you can't do that.

5 Q. Can you point me to a particular part of the  
6 election code that require -- that says that provisional  
7 ballots under current law will not be counted if you  
8 don't have any of those wide range of forms of ID?

9 A. I believe it's in an administrative rule that  
10 the Secretary of State's Office adopted and precleared,  
11 where it sets out the rules for processing provisional  
12 ballots according to the various voting systems.

13 Q. Under -- but nonetheless, under the current  
14 law, you can present a very broad range of IDs compared  
15 to the IDs that are allowable under Senate Bill 14;  
16 isn't that right?

17 A. Yes. Senate Bill 14 only permits photo IDs.

18 Q. Right.

19 A. And current law does not.

20 Q. Right. And in terms of the provisional ballot  
21 provision of Senate Bill 14, unless you can cast a  
22 provisional ballot, but if you don't have that  
23 appropriate form of photo ID and return within six days  
24 to present it to the office, your provisional ballot  
25 will not be counted, except unless very limited



<p style="text-align: center;">201</p> <p>1 circumstances; is that right?</p> <p>2 A. That's right.</p> <p>3 Q. And is it your understanding under the bill</p> <p>4 that you must return in person within six days to prove</p> <p>5 your identity in order to ensure that your provisional</p> <p>6 ballot will be counted?</p> <p>7 A. That's my understanding.</p> <p>8 Q. Is that within the bill, or is that pursuant to</p> <p>9 an administrative regulation or rule?</p> <p>10 A. That was my understanding as of the time I left</p> <p>11 the Secretary of State's Office. They may have further</p> <p>12 provided guidance on that. I'm not aware if they have.</p> <p>13 Q. Does Senate Bill 14 include a provision for</p> <p>14 voter education?</p> <p>15 A. Yes.</p> <p>16 Q. Could you describe the voter education</p> <p>17 provisions, generally speaking, in the bill?</p> <p>18 A. I think it's in Section 5 of the bill that says</p> <p>19 the Secretary of State -- anyway, it sets up several</p> <p>20 mandates for Secretary of State and county officials</p> <p>21 that specifically requires the Secretary of State to</p> <p>22 conduct a statewide effort to educate voters regarding</p> <p>23 the identification requirements.</p> <p>24 Q. And so the education requirements advise voters</p> <p>25 of the need or will advise if this law is precleared of</p>	<p style="text-align: center;">203</p> <p>1 Q. -- purpose?</p> <p>2 A. Yes.</p> <p>3 Q. Are you aware of any voters in the state of</p> <p>4 Texas who did not vote because they were concerned that</p> <p>5 voter fraud would cancel out or dilute their vote?</p> <p>6 A. I don't know that for a fact.</p> <p>7 Q. Would a registered voter who had voted in</p> <p>8 previous elections but did not have a form of photo ID</p> <p>9 and who could not vote by regular ballot experience a</p> <p>10 loss of confidence in the election system under SB-14?</p> <p>11 A. Can you repeat that?</p> <p>12 Q. Certainly. It was a confusing questioning.</p> <p>13 It's late in the day. I will withdraw that question.</p> <p>14 Is it possible that if a registered voter</p> <p>15 did not have a form of photo ID, and he appeared at the</p> <p>16 polls to vote and had to vote by provisional ballot,</p> <p>17 that he might lose confidence in the election system?</p> <p>18 A. It's possible.</p> <p>19 Q. Are you familiar with any academic studies</p> <p>20 concerning who has the necessary or allowable forms of</p> <p>21 photo ID under this law?</p> <p>22 A. Under Senate Bill 14?</p> <p>23 Q. Yes.</p> <p>24 A. No.</p> <p>25 Q. Are you aware of any academic studies</p>
<p style="text-align: center;">202</p> <p>1 the need to get ID, but it doesn't in any way reduce any</p> <p>2 burden that a voter might need to undergo to get an</p> <p>3 election identification certificate or a form of</p> <p>4 allowable ID; isn't that right?</p> <p>5 A. Right. This is purely an educational effort.</p> <p>6 Q. Did you have any concerns that without</p> <p>7 guidance, poll workers might inconsistently administer</p> <p>8 the photo ID law?</p> <p>9 A. Sure. I mean, that's a danger with all</p> <p>10 election laws. So --</p> <p>11 Q. And were you concerned that inconsistent</p> <p>12 administration of photo ID requirements might fall</p> <p>13 disproportionately on minority voters?</p> <p>14 A. I had no -- I did not have that as a specific</p> <p>15 concern.</p> <p>16 Q. In deposition testimony in this case, there</p> <p>17 have been a number of purposes that witnesses have</p> <p>18 talked about in terms of the purpose of SB-14, and I'm</p> <p>19 going to ask you a few questions about purposes of the</p> <p>20 bill. Some witnesses have testified, and I believe that</p> <p>21 this was in the submission letter along with the</p> <p>22 preclearance submission for SB-14, which you signed,</p> <p>23 that it would promote election integrity. Do you</p> <p>24 remember that --</p> <p>25 A. Uh-huh.</p>	<p style="text-align: center;">204</p> <p>1 concerning who has allowable forms of ID, photo ID,</p> <p>2 under the Georgia photo ID law or the Indiana photo ID</p> <p>3 law?</p> <p>4 A. No.</p> <p>5 Q. Is one of the purposes of Senate Bill 14</p> <p>6 deterring ineligible voters from registering to vote?</p> <p>7 A. I think it could be, because I know that one of</p> <p>8 the -- you know, one of the stated goals was to overall</p> <p>9 bring confidence in the system and perceptions of</p> <p>10 integrity in the system so, to that extent, it could</p> <p>11 prevent that from occurring.</p> <p>12 Q. Do you agree that that purpose would be served</p> <p>13 by SB-14?</p> <p>14 A. For regarding registering to vote or just</p> <p>15 overall confidence?</p> <p>16 Q. Overall confidence.</p> <p>17 A. Yes. I think that --</p> <p>18 Q. What is the basis of your belief?</p> <p>19 A. As I started to say earlier, I think all</p> <p>20 election laws is kind of a balance between access to the</p> <p>21 polls and keeping the election secure and maintaining</p> <p>22 integrity. And so to the extent that people feel like</p> <p>23 there are not enough safeguards, if you tighten it up a</p> <p>24 little bit, as long as you're not impacting access, and</p> <p>25 that's the legislative process, they're always sort of</p>



<p style="text-align: center;">205</p> <p>1 adjusting those rules.</p> <p>2 Q. And are you aware of groups or people who do</p> <p>3 not -- who feel that there are not enough safeguards in</p> <p>4 proving one's identity at the polls on election day</p> <p>5 besides the sponsors of the bill?</p> <p>6 A. You mean under current law, meaning before</p> <p>7 Senate Bill 14?</p> <p>8 Q. Correct.</p> <p>9 A. Yes.</p> <p>10 Q. Who are those people?</p> <p>11 A. I think they're many members of the</p> <p>12 legislature.</p> <p>13 Q. Outside of the legislature, who believes that</p> <p>14 we do not have enough safeguards in proving voter's</p> <p>15 identity at the polls on election day in the state of</p> <p>16 Texas?</p> <p>17 A. I think there are fair numbers of folks who</p> <p>18 believe that, and we get -- we would receive e-mails and</p> <p>19 letters from people that, you know, felt the rules</p> <p>20 should be tighter.</p> <p>21 Q. Are you aware of any academic studies,</p> <p>22 generally, about who has access to photo ID?</p> <p>23 A. Not really. We may have cited to one or two in</p> <p>24 that original submission letter, but I'm not personally</p> <p>25 aware of those studies.</p>	<p style="text-align: center;">207</p> <p>1 MR. MORTARA: Ms. McGeehan, my earlier</p> <p>2 instruction remains. You can answer.</p> <p>3 A. You mean before it was put in the bill --</p> <p>4 Q. (By Ms. Westfall) I mean at all --</p> <p>5 A. -- or after the bill?</p> <p>6 Q. -- at any time?</p> <p>7 A. We were not aware of it until it -- until after</p> <p>8 the Conference Committee. After the Conference</p> <p>9 Committee, we began to work with DPS to figure out a way</p> <p>10 to start to implement it.</p> <p>11 Q. Can you describe that?</p> <p>12 A. We had several meetings to kind of work through</p> <p>13 the requirements. DPS, I think they sent us a prototype</p> <p>14 of what it would look like, what they were preparing.</p> <p>15 Again, that was kind of ongoing as I left, so I didn't</p> <p>16 see the end of that.</p> <p>17 Q. As you sit here today, can you list for me</p> <p>18 every single purpose that you can think of for the</p> <p>19 enactment of Senate Bill 14?</p> <p>20 A. Every single purpose?</p> <p>21 Q. Yes.</p> <p>22 A. I think it was the stated purposes were to</p> <p>23 increase confidence in the election process, curb</p> <p>24 election fraud. Those are the main ones I can think of.</p> <p>25 Q. As to curbing fraud, the only fraud it could</p>
<p style="text-align: center;">206</p> <p>1 Q. Do you know whether you need to be a U.S.</p> <p>2 citizen to obtain a license to carry a concealed weapon</p> <p>3 in Texas?</p> <p>4 A. I don't know.</p> <p>5 Q. Can you describe the election identification</p> <p>6 certificate provision of Senate Bill 14?</p> <p>7 A. It requires DPS to develop a new form of -- to</p> <p>8 develop an election identification certificate that</p> <p>9 could be issued to persons that didn't have -- that were</p> <p>10 registered voters or who -- either they were registered</p> <p>11 or they were eligible to be registered, and they</p> <p>12 submitted registration right there at the DPS office.</p> <p>13 And it has to be free. And it can only be</p> <p>14 used for purposes of voting. Can't be used like a</p> <p>15 regular personal identification certificate issued by</p> <p>16 DPS.</p> <p>17 Q. Was the Division involved in developing this</p> <p>18 provision at all?</p> <p>19 A. No.</p> <p>20 Q. Did you do any analysis of this provision?</p> <p>21 A. No.</p> <p>22 Q. Did you do any drafting of this provision?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of any communications between the</p> <p>25 Division and anyone related to this provision?</p>	<p style="text-align: center;">208</p> <p>1 conceivably address is in-person voter impersonation; is</p> <p>2 that correct?</p> <p>3 A. I think that's the main fraud. You know, the</p> <p>4 legislature may have had other reasons, but I don't</p> <p>5 know, but those are the ones I recall being discussed.</p> <p>6 Q. But as to fraud, in-person voter impersonation</p> <p>7 is the only fraud that this bill could conceivably</p> <p>8 address. Is that your testimony?</p> <p>9 A. I would need to think through that. I mean,</p> <p>10 maybe there are other frauds that showing a photo ID may</p> <p>11 mitigate against.</p> <p>12 Q. Sitting here today, can you identify any other</p> <p>13 fraud besides in-person voter impersonation?</p> <p>14 A. I can't think of anything else right now.</p> <p>15 Q. All right. Can you think of any other facts or</p> <p>16 information about how -- that you haven't already</p> <p>17 testified about today, as to how Senate Bill 14 would</p> <p>18 increase voter confidence?</p> <p>19 A. I think if people trust the system, they're</p> <p>20 more likely to participate in it. And if they sense</p> <p>21 that ineligible people are voting, they may be less</p> <p>22 likely to participate. So --</p> <p>23 Q. Are there any facts to support that thesis that</p> <p>24 you can tell us about today or testify about today?</p> <p>25 A. I guess that's just my perception.</p>



<p style="text-align: center;">209</p> <p>1 Q. And you -- I believe you testified that those</p> <p>2 are the two stated reasons for Senate Bill 14?</p> <p>3 A. That I recall. That I recall.</p> <p>4 Q. Are there any unstated purpose of Senate Bill</p> <p>5 14 that you can identify today?</p> <p>6 A. No.</p> <p>7 MR. MORTARA: And remember my earlier</p> <p>8 instructions.</p> <p>9 A. No. Not to the extent that anybody on this</p> <p>10 list has mentioned any.</p> <p>11 Q. Are you aware of any unstated purposes, the</p> <p>12 existence of unstated purposes --</p> <p>13 A. No.</p> <p>14 Q. -- for Senate Bill 14?</p> <p>15 A. No.</p> <p>16 Q. Was any part of the purpose of Senate Bill 14</p> <p>17 to decrease the number of Hispanic voters participating</p> <p>18 in elections in Texas?</p> <p>19 A. I don't think so.</p> <p>20 Q. Was any part of the purpose of Senate Bill 14</p> <p>21 to decrease the number of any other groups of minority</p> <p>22 voters participating in elections?</p> <p>23 A. I don't think so.</p> <p>24 Q. Was any part of the purpose of Senate Bill 14</p> <p>25 for partisan purposes?</p>	<p style="text-align: center;">211</p> <p>1 A. Yes.</p> <p>2 Q. And if called to trial, will you testify that</p> <p>3 Senate Bill 14 has no discriminatory effect?</p> <p>4 A. Yes, based on the information I know.</p> <p>5 MS. WESTFALL: I will take a quick break</p> <p>6 and then I'll pass you over to my cocounsel.</p> <p>7 THE WITNESS: Okay.</p> <p>8 (Recess from 4:09 to 4:25 p.m.)</p> <p>9 Q. (By Ms. Westfall) Ms. McGeehan, do you agree</p> <p>10 that Hispanic surnamed voters are less likely to have</p> <p>11 the forms of allowable photo ID under SB 14?</p> <p>12 A. No. I mean, I don't have any reason to say</p> <p>13 that.</p> <p>14 MS. WESTFALL: Okay. Thank you. I have</p> <p>15 no other questions at this time. We're going to keep</p> <p>16 the deposition open pending resolution of some of our</p> <p>17 disputes about privilege.</p> <p>18 Thank you for your time.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 EXAMINATION</p> <p>21 BY MS. PERALES:</p> <p>22 Q. Good afternoon, Ms. McGeehan.</p> <p>23 A. Hello.</p> <p>24 Q. My name is Nina Perales, and I represent the</p> <p>25 Rodriguez Defendant Intervenors in this case. All of</p>
<p style="text-align: center;">210</p> <p>1 A. There may have been partisan purposes, because</p> <p>2 there usually is in everything.</p> <p>3 Q. Do you have any --</p> <p>4 A. I don't know any facts.</p> <p>5 Q. Do you have any facts to support that?</p> <p>6 A. No.</p> <p>7 Q. Did the purpose of photo ID in Texas, the</p> <p>8 legislative purpose, evolve over time and between</p> <p>9 sessions?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Was the -- was photo ID advanced to turn on</p> <p>12 citizen voting during one session and then that was less</p> <p>13 emphasized during subsequent sessions of the</p> <p>14 legislature?</p> <p>15 A. Not that I recall.</p> <p>16 Q. At any time since the passage -- since the</p> <p>17 enactment of SB-14, have you come to believe it was</p> <p>18 passed with a discriminatory purpose?</p> <p>19 A. No.</p> <p>20 Q. At any time since the passage of Senate Bill</p> <p>21 14, have you come to believe that Senate Bill 14 will</p> <p>22 have a retrogressive effect on minority voters?</p> <p>23 A. No.</p> <p>24 Q. If called to trial, will you testify that</p> <p>25 Senate Bill 14 has no discriminatory purpose?</p>	<p style="text-align: center;">212</p> <p>1 the instructions and advice that Ms. Westfall gave you</p> <p>2 will continue between you and I; is that all right?</p> <p>3 A. Yes.</p> <p>4 Q. Is it also okay if I use the term "Latino" and</p> <p>5 "Hispanic" interchangeably?</p> <p>6 A. Yes.</p> <p>7 Q. Thank you.</p> <p>8 MS. PERALES: I'd like to start by marking</p> <p>9 the news article. Now, does anybody know how we're</p> <p>10 doing the marking? Is it just whichever party is</p> <p>11 marking it, so I can mark this as 1?</p> <p>12 MR. MORTARA: That's fine.</p> <p>13 MS. PERALES: I'd like to mark this</p> <p>14 Rodriguez 1.</p> <p>15 (Rodriguez 1 marked for identification.)</p> <p>16 (Discussion off the record.)</p> <p>17 Q. Ms. McGeehan, I'm handing you what has been</p> <p>18 marked Rodriguez 1, and I will represent to you it's an</p> <p>19 article from Election Line Weekly from December 15. And</p> <p>20 I believe this in the time period shortly after you</p> <p>21 announced that you would be moving on from the Secretary</p> <p>22 of State's Office?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever see this article?</p> <p>25 A. I did, yeah.</p>



<p style="text-align: center;">213</p> <p>1 Q. It's a wonderful article.</p> <p>2 A. It is.</p> <p>3 Q. I wanted to put it in the record because I</p> <p>4 think everything in it is true.</p> <p>5 A. Thank you.</p> <p>6 Q. And I wanted the record to reflect your</p> <p>7 outstanding service to Secretary of State's Office for</p> <p>8 many, many years.</p> <p>9 A. Well, thank you. Appreciate that.</p> <p>10 Q. Ms. Westfall went over your background, which</p> <p>11 this article does an excellent job of summarizing your</p> <p>12 background and your education, and so I don't think we</p> <p>13 need to go over any more because you've covered that</p> <p>14 very well.</p> <p>15 MR. MORTARA: I'd like to put in the</p> <p>16 record that the State of Texas whole-heartedly agrees</p> <p>17 with everything that Ms. Perales just said.</p> <p>18 THE WITNESS: Well, thank you. Can we end</p> <p>19 right now?</p> <p>20 MS. PERALES: Would be a great way to end,</p> <p>21 but I do have a few more questions.</p> <p>22 THE WITNESS: Okay.</p> <p>23 Q. (By Ms. Perales) You testified earlier you are</p> <p>24 the Assistant General Counsel at the Texas county and</p> <p>25 District Retirement System. And you described this as</p>	<p style="text-align: center;">215</p> <p>1 A. Under current law?</p> <p>2 Q. Under current law?</p> <p>3 A. Under current law, if a voter provided no ID</p> <p>4 when they voted provisionally, there is no way to cure</p> <p>5 that. The ballot may not be counted.</p> <p>6 Q. And under what circumstances would it be</p> <p>7 counted?</p> <p>8 A. If a voter voted a provisional ballot for</p> <p>9 another reason, for instance, they might not be on the</p> <p>10 list of registered voters or they vote in the wrong</p> <p>11 precinct, something like that, then there may be ways</p> <p>12 where, you know, there may have been some sort of</p> <p>13 administrative mistake and their name just never made it</p> <p>14 to the list of registered voters. In that, the voter</p> <p>15 registrar may be able to find that out by looking at DPS</p> <p>16 records or other records. And in that event, then the</p> <p>17 ballot could be counted if the county voter registrar</p> <p>18 can confirm that they were registered in the right</p> <p>19 precinct.</p> <p>20 Q. Would under those circumstances, would the</p> <p>21 voter have shown ID then?</p> <p>22 A. Yes.</p> <p>23 Q. So is it your testimony that if the voter shows</p> <p>24 no form of acceptable ID under current law, and votes a</p> <p>25 provisional ballot, there is not a mechanism to allow</p>
<p style="text-align: center;">214</p> <p>1 sort of a quasi-governmental entity; is that right?</p> <p>2 A. Well, it is a governmental body per</p> <p>3 statute. But it -- we receive no state funds, so we're</p> <p>4 not a state agency. We don't get an appropriation.</p> <p>5 Q. So would it be correct to say, then, that you</p> <p>6 no longer are employed by the State of Texas?</p> <p>7 A. That's correct.</p> <p>8 Q. I wanted to talk with you a little bit about</p> <p>9 the benchmark system that we have right now for voter</p> <p>10 ID. I think you went over most of this with</p> <p>11 Ms. Westfall with respect to the current requirement to</p> <p>12 show either the voter certificate or photo ID or</p> <p>13 nonphoto ID, correct?</p> <p>14 A. I think we did.</p> <p>15 Q. Can you just walk me carefully through what</p> <p>16 happens if a voter presents themselves for voting at the</p> <p>17 polls on election day and has none of the described</p> <p>18 forms of identification? Is it correct to say that that</p> <p>19 voter could vote a provisional ballot on that day?</p> <p>20 A. Yes.</p> <p>21 Q. And then what would the voter have to do</p> <p>22 subsequent in order to have that ballot counted? Would</p> <p>23 the voter come back and cure, or is there a signature</p> <p>24 verification that goes on back at the county to make</p> <p>25 sure that ballot could be counted?</p>	<p style="text-align: center;">216</p> <p>1 that ballot to be counted either through a signature</p> <p>2 verification at the county or later presentation of ID?</p> <p>3 A. That's right.</p> <p>4 Q. Thank you.</p> <p>5 I wanted to ask you some questions about</p> <p>6 U.S. citizens and some of the types of voter ID that are</p> <p>7 described in SB 14. Our conversation is going to be a</p> <p>8 little bit disjointed because I'm bouncing around and</p> <p>9 going in-between some of the questions I have for you</p> <p>10 now.</p> <p>11 A. Okay.</p> <p>12 Q. You mentioned that you are aware that non-U.S.</p> <p>13 citizen legal residents can receive a Texas driver's</p> <p>14 license, correct?</p> <p>15 A. Yes.</p> <p>16 Q. All right. And that would also be true for a</p> <p>17 Texas identification card from DPS?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And you would agree with me that</p> <p>20 legal permanent resident immigrants can serve in the</p> <p>21 U.S. military, don't you?</p> <p>22 A. I believe that's correct.</p> <p>23 Q. And thus, they would have a military ID,</p> <p>24 correct?</p> <p>25 A. Correct.</p>



<p style="text-align: center;">217</p> <p>1 Q. All right. Did the Secretary of State's Office 2 generate any information or conduct any analysis during 3 the pendency of SB 14 on whether non-U.S. citizens could 4 obtain the forms of ID set out in SB 14? 5 A. No. 6 Q. You know a lot about the driver's license, how 7 long it's valid for, and many other things. So I'm 8 curious why the Secretary of State's Office would not 9 have made even an inquiry into whether or not 10 non-citizens could obtain the types of ID in SB 14. Can 11 you help me understand that? 12 A. I mean, we didn't -- we didn't have a reason to 13 necessarily. I mean, it was still pending legislation. 14 I don't know that we would have had the information to 15 make that kind of an analysis anyway. 16 Q. Couldn't you have looked up the -- 17 A. Oh, I'm sorry. As far as who's -- if 18 non-citizens, yeah. 19 Q. So, for example, Texas law sets out the 20 requirements for obtaining a concealed handgun license. 21 Did your office make any inquiry into whether 22 non-citizens could obtain a concealed handgun license? 23 A. We did not. 24 Q. I'm going to ask you a question now about a 25 citizenship certificate. Do you know what that document</p>	<p style="text-align: center;">219</p> <p>1 citizenship does not have a photo on it? 2 A. No. 3 Q. Do you know whether a U.S. certificate of 4 citizenship is different from a naturalization 5 certificate? 6 A. I think they're -- I believe there are 7 differences, but I -- I think we looked -- like I said, 8 we looked into it a little bit in either '07 or '09 on 9 some of those issues. I don't think we did any analysis 10 on that in 2011 for purposes of the Senate Bill 14. 11 Q. So when you -- when your office was preparing 12 the bill analysis for SB 14, then would it be correct to 13 say that in the preparation of that bill analysis, your 14 office did not, for example, look into whether the 15 stated acceptable documents had photographs in them or 16 how readily obtainable they were? 17 A. We did not. 18 Q. You'd -- you mentioned earlier several times 19 that your office is concerned with sort of technical 20 matters of the law and particularly implementation. Did 21 your bill analysis of SB 14 undertake an examination of 22 how SB 14 might be implemented from the perspective of 23 individual voters being able to use any of the stated 24 forms of ID as acceptable photo ID? 25 A. No.</p>
<p style="text-align: center;">218</p> <p>1 is? 2 A. I think I have seen one. I'm not very familiar 3 with them. No. 4 Q. Are you aware that they can be issued by the 5 citizenship and immigration service as opposed to a 6 federal court? 7 A. I probably knew that at one point, but I'm not 8 very familiar with that process. 9 Q. Did your office undertake any examination of 10 the nature of a citizenship certificate or how you get 11 it or what it looks like during the pendency of SB 14? 12 A. Not during Senate Bill 14. 13 Q. Did your office make any inquiry with respect 14 to citizenship certificates during the pendency of prior 15 bills? 16 A. I believe we did look into that, and it was 17 either 2007 or 2009, I think, based on a legislator's 18 questions to us. 19 Q. Now, with respect to SB 14, which requires a 20 photo, did your office make any examination whether a 21 citizenship certificate has a photo on it? 22 A. For SB 14? 23 Q. Yeah. 24 A. No. 25 Q. Are you aware that a U.S. certificate of</p>	<p style="text-align: center;">220</p> <p>1 Q. I'd like to go back to your testimony in 2005, 2 and I will give it to you -- 3 A. Okay. 4 Q. -- so that you can refresh your recollection, 5 and that is Exhibit U.S. 283. Do you have -- 6 A. I think I have it. 7 Q. -- U.S. 283? You might not have the right 8 pages then. I wanted to direct you to pages --oh, yes, 9 103 and 104. It's the very end maybe. 10 A. Oh, okay. 11 Q. I also thought that maybe all the pages weren't 12 there. 13 A. Oh, okay. 14 Q. Okay. In 103 and 104, you're talking about -- 15 you're clearing something up about HAVA. 16 A. Right. 17 Q. And you mentioned earlier in your testimony 18 that the requirement to present identification at the 19 time of first voting for a voter who registered by mail 20 would disappear at some point, and you used the word 21 "disappear" here in your testimony. And I wanted to 22 make sure I understood, because you also mentioned that 23 you only used this requirement for a couple of years. 24 Is this requirement that you described in HAVA to 25 provide ID at the time of first voting, is that still in</p>



<p style="text-align: center;">221</p> <p>1 effect in Texas?</p> <p>2 A. Not this exact process. Because we have a</p> <p>3 statewide database. But there -- but now that we have</p> <p>4 implemented that statewide database, where we verify</p> <p>5 driver's license and Social Security number, in the</p> <p>6 event that the State can't verify a voter's -- a voter</p> <p>7 applicant's driver's license number, it goes back to the</p> <p>8 county with a message saying state can't confirm the</p> <p>9 identity, and if it comes from DPS, we send that county</p> <p>10 the underlying DPS record.</p> <p>11 If the county -- you know, sometimes the</p> <p>12 county can look at the DPS record and see that there was</p> <p>13 a typo, and then they can add it back in and submit it</p> <p>14 to the state, and if we're able to verify it, that voter</p> <p>15 gets registered.</p> <p>16 If the county looks -- and we're all</p> <p>17 assuming this is rejected -- or a DPS, a voter that's</p> <p>18 submitted a driver's license number. If the county sees</p> <p>19 no data entry, then they send a notice of incomplete to</p> <p>20 the voter saying "State couldn't verify you. Please</p> <p>21 resubmit." If a voter submits it again, and it goes --</p> <p>22 and the county submits and it goes through and it gets</p> <p>23 approved, then they're registered. If it's submitted</p> <p>24 again, and the state still can't confirm the identity,</p> <p>25 then that voter is registered to vote, but they get</p>	<p style="text-align: center;">223</p> <p>1 Q. I was?</p> <p>2 A. Yes. You're on Page 35.</p> <p>3 Q. Oh, well, let's -- we won't talk about that</p> <p>4 part (laughing).</p> <p>5 MR. MORTARA: Ms. Perales loves making</p> <p>6 herself a fact witness as well.</p> <p>7 A. I think I was responding to a specific</p> <p>8 question, but these are excerpts, so it's hard to --</p> <p>9 Q. (By Ms. Perales) It starts, you get -- you're</p> <p>10 called up on Page 102. Do you have Page 102 there?</p> <p>11 A. Yes.</p> <p>12 Q. And you kind of start right away with that, so</p> <p>13 I suppose maybe they were mentioning it before.</p> <p>14 A. Yeah. Because it goes from Page 36 to 102, so</p> <p>15 there may have been some sort of discussion. I'm not</p> <p>16 sure what it was. But Representative Bohac, Chairman</p> <p>17 Bohac is saying that "she" -- that I will have some</p> <p>18 enlightening testimony for us. So I don't know. We</p> <p>19 would have to look at those.</p> <p>20 Q. Were you trying to make the point that the ID</p> <p>21 requirement under HAVA allowed the voter to either</p> <p>22 present the ID at the polls on election day or mail it</p> <p>23 in so there were some alternatives there?</p> <p>24 A. You know, I really don't know. March of 2005</p> <p>25 was still early in implementation of HAVA. And this was</p>
<p style="text-align: center;">222</p> <p>1 flagged as having to provide ID when they show up to</p> <p>2 vote. So that's the process that's used today.</p> <p>3 Q. Does the statewide voter database check against</p> <p>4 the Social Security database?</p> <p>5 A. Yes.</p> <p>6 Q. So if somebody provided the last four digits of</p> <p>7 the Social, but no driver's license, you would run the</p> <p>8 check that way?</p> <p>9 A. We would run the check that way. It's almost</p> <p>10 the same process. The only difference is, is we don't</p> <p>11 get any reason from Social Security as to why the record</p> <p>12 didn't match. So we can only send back to the county if</p> <p>13 it didn't match.</p> <p>14 Q. All right. So as opposed to every person who</p> <p>15 registered by mail having to show ID at the polls for</p> <p>16 first-time voting, it would be a smaller number of</p> <p>17 people who you could not match through the database, the</p> <p>18 statewide database?</p> <p>19 A. Correct.</p> <p>20 Q. And I'm curious why you were mentioning this</p> <p>21 during your testimony. Were you explaining to the</p> <p>22 legislature that there already was a photo ID</p> <p>23 requirement in place, were you trying to give them some</p> <p>24 context?</p> <p>25 A. Oh, you were called for this hearing too.</p>	<p style="text-align: center;">224</p> <p>1 a subcommittee on verification of voters. I'm not</p> <p>2 sure. I don't know why I jumped right into that. I</p> <p>3 don't know what the previous question was. I'm not sure</p> <p>4 of the context.</p> <p>5 Q. Is your statewide voter database, does it have</p> <p>6 a name, like a nickname?</p> <p>7 A. Yes. It's called "Team."</p> <p>8 Q. It's called Team, yes?</p> <p>9 A. (Witness nods head yes.)</p> <p>10 Q. I have a question for you about Team. What</p> <p>11 happens when someone registers and Team cannot get a hit</p> <p>12 on this person either in Social Security or in the</p> <p>13 driver's license, DPS database, is that then the</p> <p>14 circumstance that you described previously, you would</p> <p>15 return that information to the county?</p> <p>16 A. Yes.</p> <p>17 Q. And to your knowledge, do all counties send out</p> <p>18 notices to people in that situation asking them to</p> <p>19 resubmit?</p> <p>20 A. They're required to.</p> <p>21 Q. I wanted to ask you some questions about</p> <p>22 2009. During the 2009 session when the voter ID bill</p> <p>23 was pending in the House, the chairman was Todd Smith,</p> <p>24 Representative Todd Smith.</p> <p>25 A. Right.</p>



<p style="text-align: center;">225</p> <p>1 Q. Are you familiar with any facts around Chairman 2 Smith's efforts to get a bill passed in the House, some 3 of his proposals?</p> <p>4 A. I'm probably familiar with some of them. I 5 think he was trying to hear as many suggestions, hearing 6 from lots of different folks on.</p> <p>7 Q. Do you remember whether Chairman Smith rolled 8 out a proposed substitute at any point?</p> <p>9 A. I'm sure he did. I don't remember them all, 10 but --</p> <p>11 Q. Do you remember a proposal by Chairman Smith 12 that would increase funding for voter education and 13 voter registration as part of the voter ID bill?</p> <p>14 A. I don't remember that. I -- it may have been 15 in there, but I have forgotten that.</p> <p>16 Q. Now, at this point in 2009, there is some talk 17 about potential disparate impact of the voter ID as it 18 was being proposed at that time. And you had some 19 conversations with Ms. Westfall about Spanish surname 20 registered voters, and I want to put that aside for 21 now.</p> <p>22 And I want to ask whether the Secretary of 23 State generated any information or analysis on whether 24 there were classes of persons who might have less access 25 to the ID required by the bill, whether that be groups</p>	<p style="text-align: center;">227</p> <p>1 that; you should self-police the attorney-client 2 privilege.</p> <p>3 Q. (By Ms. Perales) So as long as it wasn't a 4 conversation with the four people that you mentioned 5 earlier, the Secretary, who might not have been Hope 6 Andrade in 2009.</p> <p>7 A. I think it was, she was.</p> <p>8 Q. So put aside the Secretary, Deputy Secretary, 9 communications and general counsel, I'd like to know 10 about your conversations or your communications with 11 e-mail, conversations inside the Secretary of State's 12 Office about potential disparate impact on the basis of 13 race or whether you needed to look into that?</p> <p>14 A. I don't recall any.</p> <p>15 Q. At this point, by 2009, you are getting 16 questions during hearings about potential racial impact 17 though; isn't that correct?</p> <p>18 A. I don't know that I received that question.</p> <p>19 Q. But were you present in hearings where this 20 issue was starting to be discussed --</p> <p>21 A. Yes.</p> <p>22 Q. -- by other witnesses, by members of the 23 legislature --</p> <p>24 A. Yes.</p> <p>25 Q. -- including Ralph Anchia?</p>
<p style="text-align: center;">226</p> <p>1 of people based on age, either youth or age, an older 2 age, or income or race. Do you remember making any 3 inquiry, your office making any inquiry or generating 4 any information like that?</p> <p>5 A. I don't recall us doing that.</p> <p>6 Q. So, for example, with respect to accepting 7 student IDs as voter ID, do you recall whether your 8 office looked into whether accepting student IDs might 9 ameliorate students and young people, in general, 10 otherwise not having access to acceptable ID?</p> <p>11 A. I don't remember doing any research on that.</p> <p>12 Q. Okay. And the same with elderly people that 13 might live in nursing homes, did your office ever look 14 into or make any analysis or generate any information on 15 their access to ID?</p> <p>16 A. I don't think so.</p> <p>17 Q. In 2009, did you have any internal 18 conversations at the Secretary of State's Office about 19 assessing potential disparate impact on the basis of 20 race of the voter ID bill that was being proposed at 21 that time?</p> <p>22 MR. MORTARA: Ms. McGeehan, the question 23 is unobjectionable, but I remind you on the attorney- 24 client privilege within the Secretary of State's Office, 25 to the extent that anything you did is protected by</p>	<p style="text-align: center;">228</p> <p>1 A. Yes.</p> <p>2 Q. But do you not recall any conversations inside 3 the Secretary of State's Office that are not privileged, 4 sort of peer to peer.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Involving looking into potential racial 7 disparate impact?</p> <p>8 A. No.</p> <p>9 Q. I'd like to go to 2010 in the interim.</p> <p>10 MS. PERALES: Okay. Here's a question for 11 United States. We have the transcript of the interim 12 Elections Committee meeting in June of 2010. Do you 13 happen to know the number for that exhibit so we can 14 refer to it?</p> <p>15 MS. WESTFALL: We didn't use that exhibit.</p> <p>16 MS. PERALES: You didn't use that exhibit? 17 I'd like to mark this Rodriguez 2, please. 18 (Rodriguez 2 marked for identification.)</p> <p>19 Q. (By Ms. Perales) I'm handing you what has been 20 marked Rodriguez 2. Happy to say we're already in 2010.</p> <p>21 A. Good.</p> <p>22 Q. If you would turn with me to Pages 36 and 37. 23 Starts near the top with "Good morning, I'm Ann 24 McGeehan."</p> <p>25 A. Okay.</p>



<p style="text-align: center;">229</p> <p>1 Q. So we've got you at the beginning of your</p> <p>2 testimony.</p> <p>3 A. Okay.</p> <p>4 Q. At the second paragraph, you talk about a 50</p> <p>5 state chart survey, and you say it's in your packet.</p> <p>6 A. Right.</p> <p>7 Q. Do you know whether -- I mean, is this -- do</p> <p>8 you know whether this was ever disclosed by the state in</p> <p>9 discovery in this case?</p> <p>10 A. I don't know.</p> <p>11 MR. MORTARA: You know better than to ask</p> <p>12 me.</p> <p>13 MS. PERALES: I'm not going to ask you.</p> <p>14 I'll stick with the answer I got from the witness, and</p> <p>15 I'll follow up later.</p> <p>16 Q. (By Ms. Perales) And that was all I was going</p> <p>17 to ask you about 2010.</p> <p>18 A. Okay.</p> <p>19 Q. Let's go to U.S. Exhibit 288. It's a House</p> <p>20 hearing transcript. Thank you.</p> <p>21 A. Okay. March 1st, 2011.</p> <p>22 Q. Correct. And turn with me to Page 313, if you</p> <p>23 may. It starts -- there's a back and forth going on</p> <p>24 here. And I'd like to have you read it from 310, Page</p> <p>25 310, just to get a better of sense of what's going on</p>	<p style="text-align: center;">231</p> <p>1 covered under this privilege.</p> <p>2 Q. Okay. So I think I can ask you about</p> <p>3 information that you have generated as opposed to</p> <p>4 communications.</p> <p>5 MR. MORTARA: You can ask about -- she can</p> <p>6 you about information that you generated.</p> <p>7 A. Uh-huh.</p> <p>8 MR. MORTARA: She cannot ask about to whom</p> <p>9 you communicated it, because that would be revealing a</p> <p>10 communication. But she can ask what information you</p> <p>11 generated.</p> <p>12 A. Okay.</p> <p>13 Q. (By Ms. Perales) I will ask about the</p> <p>14 information that you generated.</p> <p>15 A. Okay.</p> <p>16 Q. Can you describe for me the information that</p> <p>17 you generated when you looked into this question?</p> <p>18 A. I think that in 2009, the question came up</p> <p>19 about essentially this, like some sort of bypass</p> <p>20 affidavit that could be used. And we were asked to look</p> <p>21 at Michigan -- or I don't remember if we were directed</p> <p>22 or we had to look that up and find out which states had</p> <p>23 that, but we did look at that -- an affidavit process</p> <p>24 that a person who didn't have an ID could use.</p> <p>25 Q. And what type of -- in what form did the</p>
<p style="text-align: center;">230</p> <p>1 there.</p> <p>2 A. Okay.</p> <p>3 Q. On Page 310, near towards the bottom of the</p> <p>4 page, Representative Anchia starts to talk to you about</p> <p>5 what he called a "vote saving affidavit approach," and</p> <p>6 I'd like you to read through your comments on 313 just</p> <p>7 to yourself.</p> <p>8 A. Okay. (Witness reading.) Okay. So through</p> <p>9 313?</p> <p>10 Q. Yes.</p> <p>11 And so what you're basically talking about</p> <p>12 here, would it be correct to say then is what we would</p> <p>13 call a "bypass affidavit," or an affidavit in which the</p> <p>14 person swears to their identity and is then permitted to</p> <p>15 vote in lieu of providing photo ID; is that correct?</p> <p>16 A. Right.</p> <p>17 Q. And you say "We could" -- "We could look at."</p> <p>18 On Page 13, you say "We could look at what some of the</p> <p>19 other states have done." And you mentioned Michigan.</p> <p>20 Representative Anchia mentions Ohio. You say you might</p> <p>21 have heard Florida. I'm curious whether you ever --</p> <p>22 your office ever looked into that, whether or not an</p> <p>23 affidavit could serve as a way to allow someone to vote</p> <p>24 who lacked ID?</p> <p>25 A. We did in 2009 a little bit, but I think that's</p>	<p style="text-align: center;">232</p> <p>1 information -- in what form did you embody the</p> <p>2 information? Did you create a memo, or did you write</p> <p>3 any of this down?</p> <p>4 A. I -- I know I contacted Michigan, and I</p> <p>5 contacted Florida, and I think I got -- either they told</p> <p>6 me their law. I looked it up online. I -- and that's</p> <p>7 what I did.</p> <p>8 Q. Okay. And did you write -- make any notes</p> <p>9 about the information that you were learning, or did you</p> <p>10 prepare an e-mail?</p> <p>11 A. I don't remember if I put it in an e-mail or if</p> <p>12 it was in a phone conversation. I don't remember. And</p> <p>13 I think by the time we got the information, the need for</p> <p>14 the information had sort of -- wasn't as -- people</p> <p>15 weren't asking about it as much as they were.</p> <p>16 Q. Once you gathered the information, did you form</p> <p>17 a conclusion that a bypass affidavit would lead to voter</p> <p>18 fraud?</p> <p>19 A. What I -- what I obtained from the information</p> <p>20 I got from Michigan and Florida was that they thought it</p> <p>21 was a pretty good process. Although, I think I've read</p> <p>22 that Michigan is trying to change that law now. So --</p> <p>23 Q. You mentioned this was in 2009.</p> <p>24 A. Yes.</p> <p>25 Q. So at the time that you gathered the</p>





<p style="text-align: center;">233</p> <p>1 information, you understood that those states felt</p> <p>2 positively about their affidavit bypass. Did you gather</p> <p>3 any information suggesting that the affidavit bypass</p> <p>4 would increase voter fraud?</p> <p>5 A. We didn't really do much with it. I mean, we</p> <p>6 basically found out what -- what their process was. We</p> <p>7 didn't do any further analysis on it.</p> <p>8 Q. And you learned that they felt good about their</p> <p>9 process?</p> <p>10 A. I know that the Florida director felt positive</p> <p>11 about the process, and I don't know if he came to</p> <p>12 testify or there was -- at some point, there was a</p> <p>13 discussion that he might come and testify in one of the</p> <p>14 hearings.</p> <p>15 Q. And did you learn any information at that time</p> <p>16 that the bypass affidavit process would lead to</p> <p>17 increased voter fraud?</p> <p>18 A. No.</p> <p>19 Q. Could you go in the same transcript to Page</p> <p>20 285? The transcript that we're holding here.</p> <p>21 A. Okay.</p> <p>22 Q. Oh, let me ask you one last question. Since</p> <p>23 your testimony that we were just talking about was in</p> <p>24 2011, did you make any further investigation of bypass</p> <p>25 affidavit in 2011 after being asked about it in the</p>	<p style="text-align: center;">235</p> <p>1 wrote a letter to Senator Ellis, I believe, saying that</p> <p>2 she had received assurances from the U.S. Election</p> <p>3 Assistance Commission that HAVA funds could be used for</p> <p>4 voter education on SB 14. Do you recall that?</p> <p>5 A. Yes.</p> <p>6 Q. And did you make similar assurances when you</p> <p>7 testified in the legislature that the EAC HAVA funds</p> <p>8 could cover voter education for SB 14?</p> <p>9 A. I probably did, and I don't know if that was</p> <p>10 before the letter -- before Secretary Andrade wrote hat</p> <p>11 letter or not.</p> <p>12 Q. Did you have any direct communications with the</p> <p>13 EAC, the Election Assistance Commission on this topic?</p> <p>14 A. I did.</p> <p>15 Q. Can you tell me about that, those</p> <p>16 communications?</p> <p>17 A. I spoke with Tom Wilke, who was the director of</p> <p>18 the Election Assistance Commission, and asked him that</p> <p>19 question. And -- over the phone. And he answered. And</p> <p>20 he pointed me in the direction of I think an opinion</p> <p>21 they had written for the state of Indiana. I think it</p> <p>22 was Indiana. He called me back a day or two later,</p> <p>23 after the letter from Secretary Andrade had gone out and</p> <p>24 said he wasn't authorized to give that advice over the</p> <p>25 phone. So --</p>
<p style="text-align: center;">234</p> <p>1 legislature, in the hearing?</p> <p>2 A. No.</p> <p>3 Q. Is there any particular reason you did not</p> <p>4 generate more information about affidavit bypass in 2011</p> <p>5 after being asked about it in the hearing?</p> <p>6 A. I guess the impression I got was it was sort of</p> <p>7 an idea that was suggested at the hearing but that I</p> <p>8 don't know that any -- I didn't think anyone directly</p> <p>9 asked us to look into it or give them any information on</p> <p>10 it.</p> <p>11 Q. On Page 285, you are talking about the fiscal</p> <p>12 note for SB 14. And going from Page 284 to 285, is it</p> <p>13 correct that you testified in a hearing that your fiscal</p> <p>14 note assumes training and voter education for one</p> <p>15 election cycle; is that correct?</p> <p>16 A. Yes. For the 2012 cycle.</p> <p>17 Q. And so the fiscal note did not contemplate any</p> <p>18 further voter education or training in terms of how much</p> <p>19 money it was describing?</p> <p>20 A. Right.</p> <p>21 Q. I have a question about this, the HAVA funds</p> <p>22 being used for voter education on SB 14, and it's later</p> <p>23 in my outline, but I figure we could just get to it now.</p> <p>24 A. Okay.</p> <p>25 Q. I understand that Secretary of State Andrade</p>	<p style="text-align: center;">236</p> <p>1 Q. Did you ever receive a letter or any</p> <p>2 correspondence in writing from Mr. Wilke or anybody else</p> <p>3 at the EAC on the topic?</p> <p>4 A. Yes. I think he actually ended up sending a</p> <p>5 letter saying that they would have to direct that to</p> <p>6 their general counsel, or something along those lines.</p> <p>7 Q. Do you know whether they ever did direct that</p> <p>8 question to their general counsel?</p> <p>9 A. I don't know. I don't think we ever got -- I</p> <p>10 don't think we ever received a letter from their general</p> <p>11 counsel on that, that I recall.</p> <p>12 Q. So sitting here today, do you know the answer</p> <p>13 to the question, whether HAVA funds could be used for</p> <p>14 voter education for SB 14?</p> <p>15 A. It was my understanding that they could and</p> <p>16 that they had been used for voter education in other</p> <p>17 states.</p> <p>18 Q. But with respect to the prospective use of HAVA</p> <p>19 funds, given that you have nothing in writing from the</p> <p>20 EAC, and Mr. Wilke essentially verbally retracted what</p> <p>21 he had told you before, saying he was not authorized --</p> <p>22 A. Well, he just said he couldn't say one way or</p> <p>23 the other. But I mean, even if we hadn't had that</p> <p>24 conversation, there were opinions on the EAC website</p> <p>25 that authorized other states to use their HAVA funds to</p>



237

1 educate on voter ID.

2 Q. So would it be fair to say then that you feel  
3 confident today that EAC HAVA funds could be used for  
4 voter education on SB 14?

5 A. Yes.

6 Q. We talked earlier that in 2009, your office did  
7 not make an inquiry into the impact of the proposed  
8 voter ID law at that time on special classes of persons  
9 such as the very young or the very old. I'm wondering  
10 whether you looked into those questions during the 2005  
11 session or the 2007 session, what efforts your office  
12 may have made to generate information about the impact  
13 of voter ID on special classes of persons?

14 A. We did not do any analysis like that in 2005 or  
15 2007.

16 Q. Did you have any conversations internally that  
17 were not privileged, within the Secretary of State's  
18 Office in 2005 or 2007, about generating information or  
19 inquiring or doing an analysis into the potential impact  
20 of a voter ID law on special classes of persons?

21 A. No.

22 Q. So, for example, nobody -- none of the staff  
23 attorneys came up to you and said, "We got another voter  
24 ID bill on the horizon. I think our bill analysis ought  
25 to include the potential impact on certain groups of

239

1 to release that during session. And so I guess -- and I  
2 guess nobody was breaking down the door to ask for it,  
3 so it just kind of sat there for a while.

4 Q. All right. And did you then release it in  
5 response to a request by DOJ?

6 A. Yes.

7 Q. And would you use -- I think you said earlier  
8 that it was essentially the same analysis?

9 A. I believe it was, as far as the process that we  
10 used to pull the data in the February, March time frame  
11 was pretty much what we did in August or September,  
12 whenever we pulled it for the Justice Department.

13 Q. I see. So you used the same methodology but  
14 you did the poll as of a later date?

15 A. Yes.

16 Q. Now, the Secretary of State routinely  
17 provides -- you testified earlier on this, routinely  
18 provides data on Spanish surnamed registered voters;  
19 that's correct?

20 A. Yes.

21 Q. And I'm certainly familiar with that. We've  
22 been one of those groups that requested the information  
23 and received it.

24 A. Okay.

25 Q. So I'm familiar with that a little bit. Isn't

238

1 people"?

2 A. No.

3 Q. You testified earlier that in February or March  
4 of 2011, your office undertook an effort to try to match  
5 registered voters without ID with your Spanish surname  
6 registered voters; is that correct?

7 A. Yes. Wait, no, I'm sorry. We -- not with  
8 Spanish surname.

9 Q. Okay.

10 A. In February or March, we tried to do the  
11 comparison of drivers that didn't have driver's license  
12 on file with the DPS database to see if we could find  
13 additional voters, how many voters didn't have driver's  
14 license or ID identification number.

15 Q. Okay. I understand. So the Spanish surname  
16 registered voter part was not a part of the picture yet  
17 at that time?

18 A. That's correct.

19 Q. And that was the analysis that you created and  
20 then waited for approval from your executive committee  
21 to be able to release that information?

22 A. Right.

23 Q. Okay. And at what point did you receive that  
24 approval and were able to release that analysis?

25 A. We didn't -- we -- I didn't get any instruction

240

1 it true that following a general election, the Secretary  
2 of State typically updates its Spanish surnamed  
3 registered voter data, or do you do that live?

4 A. We -- we do it more frequently now with the  
5 statewide system. It used to be that we did it at  
6 designated times of the year. But with Team, you can do  
7 it, you know, I think you can do it pretty much whenever  
8 you want to. It's easier, I think.

9 Q. And the Secretary of State does post the  
10 information about Spanish surnamed registered voters on  
11 its website, correct?

12 A. I don't know if we do or not.

13 Q. When you put in your election returns, do you  
14 recall whether you ever put in Spanish surnamed  
15 registered voters?

16 A. I don't think so. No, I don't think we do.

17 Q. Okay. So would you say that you update your  
18 information on Spanish surnamed registered voters  
19 statewide at least twice a year?

20 A. Well, I -- actually, I think anybody can -- can  
21 request a copy of the, you know, the file of registered  
22 voters and can request to have the flag. So, I mean,  
23 it's available any day somebody asks for it. I think  
24 for sort of having the data ready if we get a press call  
25 or something like that, we do it; I think we do it once



<p style="text-align: center;">241</p> <p>1 a month.</p> <p>2 Q. All right. So because you have Spanish surname</p> <p>3 registered voters readily available for your total voter</p> <p>4 roll, I'm curious why once you did your analysis in</p> <p>5 February and March of 2011, attempting to identify</p> <p>6 registered voters who did not have a DPS ID, why at that</p> <p>7 point you didn't simply run the flags and look? Because</p> <p>8 you already had the data for your statewide voter role.</p> <p>9 All you needed was to run the data for the persons you</p> <p>10 had identified as not having a DPS ID. Why didn't you</p> <p>11 do it?</p> <p>12 A. I guess nobody thought to do it.</p> <p>13 Q. Were you ever instructed not to do it?</p> <p>14 A. No.</p> <p>15 Q. Okay. Did it ever occur to you to do it, and</p> <p>16 this is a different question whether anybody asked you</p> <p>17 to do it?</p> <p>18 A. It really didn't. I mean, you know, during a</p> <p>19 legislative session, it's just very busy, so it did not</p> <p>20 occur to me to do it. So I can only speak for myself.</p> <p>21 Q. Okay. But you had been through the '09</p> <p>22 session.</p> <p>23 A. Yes.</p> <p>24 Q. And at this point you're in the '11 session.</p> <p>25 A. Right.</p>	<p style="text-align: center;">243</p> <p>1 Q. And so you began to forward complaints about</p> <p>2 voter fraud to the special investigation unit of the</p> <p>3 AG's office around 2005 or 2006?</p> <p>4 A. Oh, no. We always had made referrals based on</p> <p>5 criminal -- allegations of criminal violations. In the</p> <p>6 early 2000s, we did not send over electioneering</p> <p>7 violations or misdemeanors, things like that, because</p> <p>8 they didn't have the staff. And they said, you know,</p> <p>9 please, we can't investigate. So, but they got more</p> <p>10 staff, and we were directed to just send over any</p> <p>11 credible allegations of fraud.</p> <p>12 Q. And how would you determine that an allegation</p> <p>13 was credible? What was your criteria for deciding</p> <p>14 whether something was worth sending on to the AG's</p> <p>15 Office?</p> <p>16 A. Generally, they would have to provide some sort</p> <p>17 of specific facts. They couldn't just say, you know,</p> <p>18 "We think this election is crooked. Investigate." They</p> <p>19 would have to provide something specific. Not</p> <p>20 necessarily provide any proof, but state something and</p> <p>21 there -- and it would be required to be in writing. We</p> <p>22 wouldn't take something over the phone.</p> <p>23 Q. Would you require something to be notarized?</p> <p>24 A. No.</p> <p>25 Q. Would you require it to be signed if it came in</p>
<p style="text-align: center;">242</p> <p>1 Q. And you're sitting through these legislative</p> <p>2 hearings on voter ID. And at every hearing, you're</p> <p>3 hearing witnesses say this is going to have a disparate</p> <p>4 racial impact; isn't that correct?</p> <p>5 A. Yes. At least by members of the legislature,</p> <p>6 nobody else.</p> <p>7 Q. And witnesses as well; isn't that correct?</p> <p>8 A. In some hearings.</p> <p>9 Q. Tell me the ways in which the Secretary of</p> <p>10 State's Office would receive allegations of election</p> <p>11 fraud.</p> <p>12 A. We could get them via e-mail, phone calls,</p> <p>13 written correspondence.</p> <p>14 Q. And what do you know about the office or the</p> <p>15 special investigation unit that was set up by the</p> <p>16 Attorney General's Office to look into voter fraud?</p> <p>17 A. What do I know about it? I -- at some point in</p> <p>18 the -- you know, the -- maybe around 2005 or '06, I know</p> <p>19 that they got more staff, so they were, you know, more</p> <p>20 -- had more resources to investigate election fraud. So</p> <p>21 we -- around that time, you know, it was decided that we</p> <p>22 would just send any credible allegation of election</p> <p>23 fraud, whether it was for electioneering or, you know,</p> <p>24 intimidating a voter, whatever it might be, we would</p> <p>25 send it over.</p>	<p style="text-align: center;">244</p> <p>1 by e-mail and it was credible?</p> <p>2 A. No.</p> <p>3 Q. All right. What was your understanding of what</p> <p>4 the special investigation unit of AG's office would do</p> <p>5 with these allegations?</p> <p>6 A. I -- I know they had investigators that would</p> <p>7 investigate. And then I guess at a certain point, they</p> <p>8 would turn it over to prosecutors. But we didn't --</p> <p>9 once we sent it over, we didn't really have any regular</p> <p>10 communication on that.</p> <p>11 Q. I saw that in one of your hearing testimony</p> <p>12 transcripts that you testified that you were unaware of</p> <p>13 the ultimate disposition --</p> <p>14 A. Correct.</p> <p>15 Q. -- of some of these complaints.</p> <p>16 A. Right. We didn't -- we wouldn't necessarily</p> <p>17 know if they were going to prosecute someone or not.</p> <p>18 Q. Did there ever come a time when your office</p> <p>19 decided to check back in on some of these allegations</p> <p>20 that had been made and find out from the special</p> <p>21 investigation unit what had happened to these</p> <p>22 complaints?</p> <p>23 A. I think we had discussed a process to kind of</p> <p>24 have sort of regular updates, but it -- we never really</p> <p>25 got very far with that.</p>



<p style="text-align: center;">245</p> <p>1 Q. So today, do you have any more information</p> <p>2 about the disposition of these complaints than you did</p> <p>3 when you were testifying in the legislature?</p> <p>4 A. No.</p> <p>5 Q. Do you know whether documenting election fraud</p> <p>6 became a higher priority at some point for the special</p> <p>7 investigation unit at the AG's office?</p> <p>8 A. I don't know. I mean, like -- I know that they</p> <p>9 got more resources so they dedicated more folks to</p> <p>10 it. That's about all I know on that.</p> <p>11 MS. PERALES: Can we have Exhibit U.S.</p> <p>12 284?</p> <p>13 Q. (By Ms. Perales) Do you have Exhibit U.S. 284?</p> <p>14 A. Here it is.</p> <p>15 Q. Okay. Oh, it's very small. Do you have Page</p> <p>16 99 in there? If not, I'll give you the bigger</p> <p>17 transcript.</p> <p>18 A. Okay. Yes. I have Page 99.</p> <p>19 Q. Okay. So down at the bottom, Senator</p> <p>20 Van de Putte asks you, "How many complaints have you had</p> <p>21 about voter impersonation?" Is it correct that you</p> <p>22 testified, "We have not had any"?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And then let's go to June 14,</p> <p>25 2010. This is Rodriguez --</p>	<p style="text-align: center;">247</p> <p>1 -- I don't know. I don't remember now what they all</p> <p>2 were, but -- let me see what the exact question they</p> <p>3 asked me.</p> <p>4 Well, that's what I said. Maybe -- I</p> <p>5 don't know. Maybe some of the referrals may have sort</p> <p>6 of some general allegations, and it's possible once the</p> <p>7 AG does their investigation, they may uncover other</p> <p>8 violations. But probably just on the face of it, two of</p> <p>9 them clearly involve that as an allegation. And I think</p> <p>10 we provided copies of all this to the committee too.</p> <p>11 Q. Do you know if the state produced those</p> <p>12 documents in discovery?</p> <p>13 A. I don't know.</p> <p>14 Q. I'm going to give you one more document. This</p> <p>15 is the March 6th memo.</p> <p>16 (Rodriguez 3 marked for identification.)</p> <p>17 Q. (By Ms. Perales) Ms. McGeehan, the court</p> <p>18 reporter has handed you what has been marked Rodriguez</p> <p>19 Deposition Exhibit 3. Do you recognize this as a memo</p> <p>20 from Secretary of State Hope Andrade to members of the</p> <p>21 House Committee on Elections dated March 6, 2009?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I'd like you to turn with me to Page 2,</p> <p>24 where there's a section about complaints received</p> <p>25 concerning election-related crimes (vote fraud). Do you</p>
<p style="text-align: center;">246</p> <p>1 A. 2?</p> <p>2 Q. It's Rodriguez 2. Thank you. Can you turn to</p> <p>3 Page 46?</p> <p>4 A. Yes.</p> <p>5 Q. Okey-dokey. Oops. You're talking on Page 46.</p> <p>6 If you can look back to Page 45, you start talking about</p> <p>7 -- you start giving your answer. And is it correct to</p> <p>8 say that on June 14, 2010, in the paragraph near the</p> <p>9 bottom, you say, of the 24 referrals that you made to</p> <p>10 the Attorney General, at least two of them involve</p> <p>11 allegations of voter impersonation.</p> <p>12 A. I'm sorry. On what page?</p> <p>13 Q. 46.</p> <p>14 A. 46.</p> <p>15 Q. It's in the second full paragraph.</p> <p>16 A. Okay. Yeah. I see that now.</p> <p>17 Q. You testified you've made 24 referrals over the</p> <p>18 past two years, and you said "two of them," and then you</p> <p>19 said, "at least two of them involve allegations of voter</p> <p>20 impersonation."</p> <p>21 A. Uh-huh. Yes.</p> <p>22 Q. And that was your testimony?</p> <p>23 A. Yes.</p> <p>24 Q. Was it two or was it more than two?</p> <p>25 A. I said it was two. Maybe in my head I thought</p>	<p style="text-align: center;">248</p> <p>1 see this?</p> <p>2 A. Yes.</p> <p>3 Q. By the way, did you write this document?</p> <p>4 A. I -- yes, I think I did. I'm sure other people</p> <p>5 helped, but I think I was the primary author.</p> <p>6 Q. Okay. Do you recall anyone ever making</p> <p>7 suggestions that you change the document from one draft</p> <p>8 to the other?</p> <p>9 A. I'm sure that I -- most likely, I wrote the</p> <p>10 initial draft, and then it was sent to the executive</p> <p>11 department for review, and they probably did make</p> <p>12 changes.</p> <p>13 Q. Okay. So in this paragraph about -- on Page 2,</p> <p>14 let's see, somewhere in here you say you have received</p> <p>15 -- okay. It's a dense paragraph, but maybe about a</p> <p>16 third of the way in.</p> <p>17 A. Yeah. I can't believe we provided it this way,</p> <p>18 but maybe we did. It looks kind of like -- anyway.</p> <p>19 Q. It says, "Of those complaints, of the written</p> <p>20 complaints received, several alleged multiple instances</p> <p>21 of voter impersonation complaints clearly involve</p> <p>22 allegations of voter impersonation."</p> <p>23 And here the word "several" is used. And</p> <p>24 the time frame, I believe, is since September 1, 2007.</p> <p>25 So that would be about a year and a half between 2007</p>



<p style="text-align: center;">249</p> <p>1 and 2009. I'm having a hard time meshing that number 2 several with your other testimony in -- well, in 2005, 3 you had received no complaints, and then in 2010, you 4 said you received two complaint between 2009 and 2010. 5 A. Well, is the difference that they're talking 6 about complaints here and in the other, it's talking 7 about referrals to the AG. 8 Q. I see. I see. So that helps me with my next 9 question. Do you recall whether you ever forwarded to 10 the Attorney General's Office for investigation any 11 complaints that arose from the City of Taft? 12 A. Well, I guess we did. This is dated March of 13 2009. City of Taft, City of Progreso, and something in 14 Harris County. 15 Q. But you were mentioning to me before that not 16 all of the complaints go on to the Attorney's General's 17 Office. They have to be sufficiently specific to be 18 investigated. 19 A. Right. 20 Q. Do you recall whether any of the complaints 21 from Taft, Progreso or Harris County were sufficiently 22 detailed or even gave enough information that they could 23 be investigated? 24 A. I think those were. I mean, I believe we did 25 make referrals to the AG on those. You know, it could</p>	<p style="text-align: center;">251</p> <p>1 A. That probably came from John Sepehri, who was 2 the general counsel. 3 Q. And do you ever remember providing an answer to 4 that question? 5 A. I'm sure I did provide an answer. 6 Q. Okay. Do you remember what the answer was? 7 A. I think it did. I mean, I think it did, 8 because I think that's the question that Representative 9 Anchia asked us, so... And it would have included all. 10 We wouldn't have -- 11 Q. Do you remember whether the complaints from 12 Taft and Progreso were related to local elections? 13 A. Progreso was related to local elections. I 14 think it was school district and city. Taft, I don't 15 really remember what that was. 16 Q. Okay. So would it be fair to say then that 17 John is asking you here, the general counsel for the 18 Secretary of State, asking you here to make sure you put 19 in everything you had? 20 A. Yes. 21 THE COURT REPORTER: Is it okay if we take 22 a short break? 23 MS. PERALES: Yes. 24 (Recess from 5:27 to 5:36 p.m.) 25 MS. PERALES: I marked Rodriguez 4. Did I</p>
<p style="text-align: center;">250</p> <p>1 be -- well, I don't know. 2 Q. Do you remember attaching copies or putting 3 together with this memo copies of the complaints? 4 Because it says in the next couple of sentences, "Copies 5 of all written complaints are enclosed." Do you 6 remember other things being with this memo such as 7 copies of the complaints? 8 A. I think there were. Yes. 9 Q. Do you know if that was ever produced by the 10 state in discovery? 11 A. I don't know. 12 Q. On the next page, the third page, the very top, 13 in all caps, is -- 14 A. This is not a final. I don't know where this 15 came from, but yeah, this does -- I know this did not go 16 out to the committee like that. I can just tell you 17 that for sure. 18 Q. I don't know. Maybe the executive office made 19 changes after you wrote a beautiful draft. I can't say 20 either. But did I want to ask you about the paragraph 21 at the top. "Question for Ann," it says. "Do these 22 figures in the attachments I reviewed reflect all 23 instances of complaints the office received for all 24 elections since September 27, whether primary, local or 25 otherwise?" Do you know where that question came from?</p>	<p style="text-align: center;">252</p> <p>1 give it to you? 2 THE WITNESS: No. 3 MS. PERALES: I did not. Can you please 4 mark this. 5 (Rodriguez Exhibit 4 marked for 6 identification.) 7 Q. (By Ms. Perales) Ms. McGeehan, I'm handing what 8 has been marked Rodriguez 4. Do you recognize this 9 document? 10 A. Yes. 11 Q. And what is the document? 12 A. It is the State submission of Senate Bill 14, 13 the letter submission. I guess we -- okay. It's the 14 whole submission. 15 Q. I hope it is. 16 A. Yeah. 17 Q. Okay. If you wouldn't mind turning with me to 18 Page 10, paragraph N as is "Nancy." You state here, 19 "The Act does not have the intent and will not have the 20 affect the diluting voting strength of any racial or 21 linguistic minority." And you also state that the Act 22 will not affect members at any racial or linguistic 23 minority differently from the way the general public is 24 affected." Do you see that language? 25 A. Yes.</p>





<p style="text-align: center;">253</p> <p>1 Q. Can you give me the factual basis that you had</p> <p>2 for making that statement?</p> <p>3 A. That was the opinion of the office based on the</p> <p>4 information we had, and there's a discussion beneath</p> <p>5 that paragraph or further discussion in N that sets out</p> <p>6 a legal analysis of that.</p> <p>7 Q. I see it. Putting aside the legal analysis,</p> <p>8 are you able to identify any specific facts that formed</p> <p>9 the basis of your statement in the first paragraph of</p> <p>10 Section N?</p> <p>11 A. Well, essentially, this is a standard clause</p> <p>12 that we put in most of our submissions. This may have</p> <p>13 been tweaked a little bit on this one, but we almost</p> <p>14 always have this sentence in every submission. So</p> <p>15 unless we have specific information that there is a</p> <p>16 discriminatory intent or a discriminatory impact, we</p> <p>17 will put this -- these statements in the submission.</p> <p>18 Q. I understand, and I have seen this type of</p> <p>19 statement before in other submissions. I understand</p> <p>20 it's something of a boilerplate.</p> <p>21 A. Yes.</p> <p>22 Q. But here, I need an answer directly to my</p> <p>23 question whether you had any facts supporting the</p> <p>24 statements in the first paragraph of N at the time of</p> <p>25 the submission.</p>	<p style="text-align: center;">255</p> <p>1 and John may have sent it to some other folks.</p> <p>2 Q. And then eventually, it made its way back to</p> <p>3 you?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And do you always read it through</p> <p>6 and make sure it's all you before you sign it and send</p> <p>7 it off?</p> <p>8 A. Well, I mean, it wasn't all me, but I felt</p> <p>9 comfortable signing it.</p> <p>10 Q. Why did you put Larry Gonzalez and Aaron Pena</p> <p>11 as contacts in the -- I guess you'd call it the second</p> <p>12 to last page. It actually looks like there's three</p> <p>13 contacts: Aaron Pena, Larry Gonzales, and Jose</p> <p>14 Aliseda. Why did you put those three people?</p> <p>15 A. Actually, John Sepehri made that decision as to</p> <p>16 which -- as to who he would list as the minority</p> <p>17 contacts.</p> <p>18 Q. I see. So this is typically racial minority</p> <p>19 persons?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any African Americans on this list?</p> <p>22 A. No.</p> <p>23 Q. Do you know of any African Americans who were</p> <p>24 -- who spoke or testified on the bill?</p> <p>25 A. For the bill?</p>
<p style="text-align: center;">254</p> <p>1 A. I had no facts that showed that the Act would</p> <p>2 have -- that the Act would affect members of a racial or</p> <p>3 linguistic minority differently from the way the general</p> <p>4 public was affected.</p> <p>5 Q. Did you have any facts that the Act would not</p> <p>6 affect members of any racial or linguistic minority</p> <p>7 differently?</p> <p>8 A. No.</p> <p>9 Q. Did you have any fact showing that the Act did</p> <p>10 not have the intent of diluting the voting strength of</p> <p>11 any racial or linguistic minority?</p> <p>12 A. No, I did not have any fact, factual</p> <p>13 information that the Act had the intent of diluting the</p> <p>14 voting strength of any racial or linguistic minority.</p> <p>15 Q. Would it be correct to say that you didn't have</p> <p>16 any facts one way or the other with respect to the</p> <p>17 effect of Senate Bill 14 on racial and linguistic</p> <p>18 minorities?</p> <p>19 A. Yes. I think that's fair.</p> <p>20 Q. You signed the submission; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Did you prepare it?</p> <p>23 A. It was -- the initial draft was by one of the</p> <p>24 attorneys in the Division, and then it went through</p> <p>25 Elizabeth. I looked at it. It went to John Sepehri,</p>	<p style="text-align: center;">256</p> <p>1 Q. For or against.</p> <p>2 A. For or against. I don't recall any African</p> <p>3 American legislators testifying for the bill.</p> <p>4 Q. Do you remember some in opposition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And with respect to Latinos, because</p> <p>7 these three guys are Latinos; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. They were all for the bill?</p> <p>10 A. I know that Representative Pena and</p> <p>11 Representative Jose were. I don't know about Gonzales,</p> <p>12 Representative Gonzales. I guess he was. He was a</p> <p>13 co-sponsor, so...</p> <p>14 Q. Yes, he was a co-sponsor, so we're assuming he</p> <p>15 voted for the bill he co-sponsored?</p> <p>16 A. Yes.</p> <p>17 Q. And so these three names that you chose to give</p> <p>18 to DOJ, these three Latinos did not oppose the bill; is</p> <p>19 that correct?</p> <p>20 A. That's my understanding.</p> <p>21 Q. Okay. So the decision was made by the general</p> <p>22 counsel to put three Latinos, no African Americans, and</p> <p>23 only people who supported the bill?</p> <p>24 A. Yes. And generally, that's what we do is, put</p> <p>25 down the names of people that are supportive of the</p>



257

1 bill.

2 Q. Did you have any communications with  
3 legislators or anyone in the Office of the Lieutenant  
4 Governor during the period of time that this submission  
5 was being prepared and following passage of SB 14?

6 MR. MORTARA: I'm sorry. Can you read  
7 back the question, Chris? I just have make sure I have  
8 no privilege instruction.

9 (Requested portion was read back by the  
10 court reporter.)

11 MR. MORTARA: You can answer that question  
12 yes or no.

13 A. I did not.

14 Q. (By Ms. Perales) Do you know whether anybody in  
15 your office had the communications with anybody in the  
16 Legislature or the Lieutenant Governor's Office during  
17 the preparation of this submission and following passage  
18 of SB 14?

19 A. I'm not aware of any.

20 Q. Okay. Would that answer be same with respect  
21 to with some of the subsequent correspondence that you  
22 had DOJ?

23 A. Regarding if there were any conversation with  
24 the Lieutenant Governor's Office or the Legislature?

25 Q. Correct.

258

1 A. That's correct. I'm not aware of any  
2 communications.

3 Q. All right. So while all this significant  
4 amount of back and forth is going on between you and the  
5 Department of Justice, and you're trying to provide more  
6 information in response to their requests for more  
7 information, who did you turn to, to navigate through  
8 this if not anybody in the Legislature or the Lieutenant  
9 Governor's Office?

10 A. I think our -- from my perspective, we were  
11 more in contact with the AG's Office, and that's  
12 probably privileged, at that point, with the Attorney  
13 General's Office --

14 Q. Uh-huh.

15 A. -- on how to respond to Justice Department.

16 Q. Well, you weren't the client of the Attorney  
17 General.

18 MR. MORTARA: No, but the Attorney General  
19 represents the State, and the Attorney General is the  
20 lawyer for the entire state, including the Secretary of  
21 State when they ask for legal advice from the Attorney  
22 General's Office, so it's privileged.

23 Q. (By Ms. Perales) So you asked the Attorney  
24 General's Office for legal advice?

25 A. Yes.

259

1 Q. Was there -- did you have communications with  
2 the Attorney General's Office that was not a request for  
3 legal advice?

4 A. No. I think -- I think it would be considered  
5 legal advice as far as getting the Act precleared.

6 Q. Uh-huh. Would you send factual information to  
7 the Attorney General's Office from time to time during  
8 the course of the back and forth with DOJ on the  
9 Section 5 submission?

10 MR. MORTARA: You can answer that question  
11 yes or no, Ms. McGeehan.

12 A. Yes.

13 Q. (By Ms. Perales) Do you know whether that  
14 factual information was produced in discovery?

15 A. I don't know what was produced in discovery.

16 Q. I'm sorry I keep asking that question.

17 A. That's okay. Okay. Yeah.

18 Q. But I have to get it on the record. I don't  
19 mean to be a pest about that. Okay.

20 MS. PERALES: I'd like mark this Rodriguez  
21 5, please.

22 (Rodriguez Exhibit 5 marked for  
23 identification.)

24 Q. (By Ms. Perales) Do you recognize the first  
25 page of this document as a letter from Senator Ellis to

260

1 you dated October 27th, 2011.

2 A. Yeah. I need to refresh my memory on  
3 this. (Reading document.) okay. I have looked at it.

4 Q. Do you recognize the first document, that's the  
5 first page, printed double-sided, as a letter to you  
6 from Senator Ellis?

7 A. Yes.

8 Q. Do you recognize the second document as an  
9 attachment to that letter which is a letter from state  
10 demographer Lloyd Potter?

11 A. Yes.

12 Q. I'm going to ask you a couple of questions  
13 about this. Were you involved in the meeting between  
14 the Secretary of State's Office and Dr. Potter, the  
15 state demographer, about the methodology for deriving  
16 the number of registered voters in Texas by race and  
17 Spanish surname that might lack ID?

18 A. Yes.

19 Q. Okay. And is it correct to say, then, that in  
20 this meeting with Dr. Potter, you discussed your  
21 methodology for coming up with this number, and he  
22 discussed his ideas?

23 A. Yes.

24 Q. Did Dr. Potter make any suggestions about the  
25 methodology that should be used?



ESQUIRE  
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO  
Facsimile: 512.328.8139

Suite 220  
3101 Bee Caves Road  
Austin, TX 78746  
www.esquiresolutions.com

261

1 A. As best as I can remember the meeting,  
2 Dr. Potter, you know, ran through a couple possible ways  
3 that they might be able to do the analysis. And I think  
4 when he heard of the information that DPS had -- and I  
5 think in the meantime -- okay. We had already gotten  
6 the request from DOJ asking -- I'm just trying to get  
7 the time line straight in my head.

8 Okay. So we had already had received the  
9 Justice -- so the Justice Department had probably  
10 already asked us to be looking at the -- or comparing  
11 the DPS race data. So we were starting to analyze what  
12 we could do with that. And I think once we shared that  
13 with Dr. Potter, I think he decided that might be more  
14 fruitful than the kinds of analysis that he could do  
15 with the census information and things like that.

16 Q. Did Dr. Potter make any suggestions or offer  
17 something he thought you all should be doing that you  
18 decided not to do?

19 A. I don't remember that.

20 Q. When you had your conversation with Dr. Potter,  
21 was it only about race, or was it also about trying to  
22 look at Spanish surname?

23 A. I think it also was about race. Spanish  
24 surname or -- could you restate your question, please?

25 Q. Well, I understand from your previous testimony

262

1 that when you were looking at trying to identify Spanish  
2 surnamed registered voters who might lack ID --

3 A. Uh-huh.

4 Q. -- that you were comparing your registered  
5 voters with DPS and looking at their Spanish surnamed  
6 people; is that right? Or you were just looking at all  
7 the Spanish surnamed flagged people in your database,  
8 and the ones you could not find in DPS?

9 A. Well, and I remember we didn't -- we didn't do  
10 any analysis of DPS data -- and I'm just trying to build  
11 a timeline here. We sent the Justice Department the  
12 data on the voters that we could identify that didn't  
13 have a driver's license. The Justice Department came  
14 back and said, oh, but we know that DPS has information  
15 on the driver's race. Can you run that information  
16 against your voter information? And that request, I  
17 think, came in around the same time as this letter from  
18 the demographer, or the request from Senator Ellis. And  
19 I'm not sure how DPS -- how they identified race in  
20 their data.

21 Q. Uh-huh. Okay. So with respect to Spanish  
22 surname, you could always have run -- once you figured  
23 out who was in the voter database who you couldn't find  
24 in DPS, which is possibly a list of people who lack  
25 voter ID, you could always have looked at that group of

263

1 people for what percentage of them were Spanish  
2 surnamed; you didn't need to look at DPS's race data to  
3 figure that out? In fact, they weren't even in the DPS  
4 database, correct?

5 A. Well, and we sent that to the Justice  
6 Department in September. We did that --

7 Q. With the Spanish surname information?

8 A. Yes.

9 Q. Okay. And so this is -- these letters that  
10 we're looking at in Rodriguez 5 have more to do with an  
11 attempt to figure out the race of the people who might  
12 not have ID?

13 A. Yes.

14 Q. So at this point, you've got the Spanish  
15 surname figured out.

16 A. We've got the Spanish surname data figured out.

17 Q. Okay.

18 A. Right, and then the Justice Department asked us  
19 to, sort of, see if we could further analyze the voter  
20 data by comparing it to the DPS data with the --  
21 whatever racial classifications they had.

22 Q. And at that time, were you looking at Hispanic  
23 as a racial classification, or had you stopped looking  
24 at Hispanics?

25 A. Well, DPS had that as a -- as a category, so we

264

1 looked at it. Now, that was on -- that was just  
2 beginning, and I left the agency before that analysis  
3 had concluded.

4 Q. Okay.

5 MS. PERALES: Can we look at the March 18,  
6 '09 House Journal. I would like to mark this as  
7 Rodriguez 6.

8 (Rodriguez Exhibit 6 marked for  
9 identification.)

10 Q. (By Ms. Perales) The court reporter has handed  
11 you what has been marked Rodriguez 6. And do you  
12 recognize this as the Senate Journal from March 18,  
13 2009?

14 A. Yes.

15 Q. Turn with me to Page 591 if you would, which is  
16 tail end of a letter that actually begins on the first  
17 page, from Deputy Secretary of State Colby Shorter, III.

18 A. Yes. And it's really Coby, not Colby.

19 Q. Coby.

20 A. Coby. His real name.

21 Q. So this is a letter from Mr. Shorter, and he --  
22 you have previously described the position of Deputy  
23 Secretary of State as somebody in the executive office;  
24 is that right?

25 A. They're basically number two.



<p style="text-align: center;">265</p> <p>1 Q. The number two, right below Hope Andrade; is 2 that right?</p> <p>3 A. That's right.</p> <p>4 Q. If you would turn with me to Page 591, there is 5 a question on that page: "Does the Secretary of State 6 track the racial status of registered voters? If not, 7 how will the state prove that Senate Bill 362 does not 8 have an adverse impact on the minority voters when the 9 state submits the bill for preclearance." Do you see 10 that question?</p> <p>11 A. Yes.</p> <p>12 Q. And is it correct, if you look at the second 13 paragraph, every submission to the U.S. Department of 14 Justice? Do you see that second paragraph there?</p> <p>15 A. Yes?</p> <p>16 Q. The third sentence, do you see where it says, 17 "A similar effort to obtain such demographics may be 18 required for a voter identification bill." Do you see 19 that there?</p> <p>20 A. Yes, I do.</p> <p>21 Q. So would it be fair to say, then, that the 22 number two person at the Secretary of State's Office, in 23 March of 2009, was informing the Legislature that an 24 effort would have to be made when attempting to preclear 25 a voter ID bill to identify the demographics of</p>	<p style="text-align: center;">267</p> <p>1 Texas driver's license or ID?</p> <p>2 A. Yes. That's what I said.</p> <p>3 Q. How did you know that it was possible that the 4 U.S. DOJ would ask for that, if the letter asking for it 5 didn't come in until September 23rd?</p> <p>6 A. Well, Amber -- Amber's original question to me, 7 or she's referencing -- she is referencing a request 8 from Senator Gallegos's office, I think. Well, I don't 9 really know who Debbie is. But in any event, I mean, 10 what we did -- I think it started out at Senator 11 Gallegos's office, they asked a question about, you 12 know, the number the voters that didn't have driver's 13 license or personal ID numbers issued by DPS, and I 14 think we had just sent that to Justice Department.</p> <p>15 Q. Uh-huh.</p> <p>16 A. And so it was public information, and I sent it 17 to Senator Gallegos's office. He must have sent it to 18 Senator Van de Putte's office. And I think once it was 19 out there, then the question was, have you broken this 20 down by Hispanic surname. So once other people were 21 asking the question, it seemed natural that DOJ might 22 ask that question, so...</p> <p>23 Q. Is it your testimony that it did not occur you 24 to you that DOJ would ask for breakdowns by Spanish 25 surname before it was suggested to you by the staffer in</p>
<p style="text-align: center;">266</p> <p>1 registered voters?</p> <p>2 A. Yeah. He said it may be required. He offered 3 it, but...</p> <p>4 Q. Okay. So would it be fair to say, then, and 5 your office knew, in 2009, that having to get 6 demographics on registered voters might be a part of the 7 preclearance process for showing that a voter ID bill 8 complied with Section 5?</p> <p>9 A. Yes, I mean, Deputy Shorter's answer mentioned 10 that, so...</p> <p>11 Q. Okay.</p> <p>12 MS. PERALES: I'd like to mark this, 13 please.</p> <p>14 (Rodriguez Exhibit 7 marked for 15 identification.)</p> <p>16 Q. (By Ms. Perales) The court reporter has handed 17 you what has been marked Rodriguez Deposition 18 Exhibit 7. And do you recognize this as some e-mail 19 communication between yourself and a staffer for Senator 20 Van de Putte?</p> <p>21 A. Yes.</p> <p>22 Q. And is it fair to say that in your September 23 15th e-mail, 2011, to Amber Hausenfluck, you are 24 discussing the possibility that DOJ will ask for racial 25 breakdowns of data regarding which voters do not have a</p>	<p style="text-align: center;">268</p> <p>1 an e-mail?</p> <p>2 A. I don't think it did. I don't think they 3 specifically asked for it when they asked for the data.</p> <p>4 Q. DOJ, you mean?</p> <p>5 A. DOJ.</p> <p>6 Q. Okay. I understand. DOJ didn't ask for the 7 data until they asked for it --</p> <p>8 A. Right.</p> <p>9 Q. -- around September 23rd. But is it your 10 testimony that it did not occur to you that the Justice 11 Department would ask for that kind of information prior 12 to September 14th, when it was suggested by a Senate 13 staffer?</p> <p>14 A. I don't remember it -- I mean, it seems obvious 15 now, but I don't recall it coming to me or asking our IT 16 department to do it.</p> <p>17 Q. And so you don't recall it occurring to you?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 MS. PERALES: Mark this Rodriguez 8. 21 (Rodriguez Exhibit 8 marked for 22 identification.)</p> <p>23 Q. (By Ms. Perales) The court reporter has handed 24 you what has been marked Deposition Exhibit Rodriguez 25 8. Do you recognize this as a September 7, 2011 letter</p>



269

1 from you to Chris Herren at the Department of Justice?  
 2 A. Yes.  
 3 Q. In the very last sentence of your letter you  
 4 say, "The percentage --" and by there you were talking  
 5 about registered voters who have a Texas driver's  
 6 license or I.D. card -- "it's very likely to be higher  
 7 since we used stringent matching criteria to arrive at  
 8 this figure." Do you see that last sentence there?  
 9 A. I'm sorry. On the first page?  
 10 Q. No, last --  
 11 A. On the last page.  
 12 Q. Last sentence, last page.  
 13 A. Yes.  
 14 Q. All right. Did you perform any analysis in  
 15 your office comparing or exploring the degree to which  
 16 your matching criteria would be under inclusive?  
 17 A. Well, we knew that it would be, because when we  
 18 have to verify driver's license numbers for purposes of  
 19 getting a voter registered, we knew that a match on  
 20 first name, last name -- and let me refresh my memory  
 21 here. Last name, first name and date of birth tends to  
 22 produce fewer matches.  
 23 Q. Than what?  
 24 A. Than if we did last name and first initial.  
 25 And I would need to refresh my memory. But we have a --

270

1 first names frequently don't match exactly, because you  
 2 may -- I may be Annie in one database and Ann in another  
 3 or whatever. And I know that we didn't have any  
 4 flexibility with the matching criteria with Social  
 5 Security Administration, because that was set out and  
 6 it's the same nationwide, but we were able to work  
 7 the -- on our matching criteria for verifying voters for  
 8 voter applicants.  
 9 Q. Uh-huh. And when you verify somebody who is  
 10 applying to register to vote, you do use the matching  
 11 criteria, last name, first name, date of birth; is that  
 12 right?  
 13 A. Well, we match on the driver's license number,  
 14 so I don't think we use the full first name.  
 15 Q. Okay.  
 16 A. I would -- I would need to refresh my memory,  
 17 but I think that -- I don't think we require an exact  
 18 match on first name.  
 19 Q. Do you have any studies in the Secretary of  
 20 State's Office showing the under inclusiveness of a last  
 21 name, first name, date of birth matching criteria or the  
 22 potential errors of just using last name, first initial  
 23 date of birth? Do you have any, sort of, empirical  
 24 evidence regarding the -- what you call, you know, or  
 25 what you suggest is an under inclusive methodology here?

271

1 A. I don't know that we have any empirical data.  
 2 I know that went we met with DPS to set up the process  
 3 to verify the driver's license numbers for purposes of  
 4 complying with HAVA, we met with their folks and  
 5 discussed matching criteria, and this issue came up. I  
 6 don't think we have any studies or anything of that  
 7 nature.  
 8 Q. And you chose not to use a match on the  
 9 driver's license number when you were producing this  
 10 data for DOJ? You chose to use last name, first name,  
 11 date of birth? Don't you have the driver's license  
 12 number in the voter registration database?  
 13 A. Well, but this is for -- these were for the  
 14 folks that didn't have a driver's license.  
 15 Q. Oh, okay. That's right.  
 16 A. That's why we had to do it that way.  
 17 Q. So you have a completely different methodology  
 18 for confirming identity in your statewide database for  
 19 voter applicants than you did for your DOJ submission?  
 20 A. Yes.  
 21 Q. Because you couldn't match on the driver's  
 22 license number?  
 23 A. Right.  
 24 Q. But so putting aside your conversations with  
 25 DPS on matching voter applicants, do you have any

272

1 empirical data with respect to the either over or under  
 2 inclusive nature of trying to match last name, first  
 3 name and date of birth?  
 4 A. The only other evidence we would have of that  
 5 is the different rates of verifying drivers' licenses  
 6 against the rate of verifying the last four digits of  
 7 the social security number, and there's a higher rate of  
 8 rejects on social security number. And so it's been our  
 9 conclusion that that's due to the stricter matching  
 10 criteria for social security.  
 11 Q. But you just said that when you're matching a  
 12 driver's license number, you're not using last name,  
 13 first name, and date of birth.  
 14 A. Right. But we have to do that for social --  
 15 what I'm saying is, for the social security number  
 16 match, it's similar to this. It's first name and last  
 17 name. We don't do that when we verify with the DPS  
 18 data.  
 19 Q. And so you get a closer match when you can  
 20 match up driver's license numbers than when you are  
 21 looking at names and date of birth?  
 22 A. Yes, exactly.  
 23 Q. Okay.  
 24 (Rodriguez Exhibit 9 marked for  
 25 identification.)



**ESQUIRE**  
 DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO  
 Facsimile: 512.328.8139

Suite 220  
 3101 Bee Caves Road  
 Austin, TX 78746  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



273

1 Q. (By Ms. Perales) The court reporter has handed  
2 you what has been marked Rodriguez Deposition Exhibit  
3 9. Do you recognize this as a letter from you to Chris  
4 Herren at the DOJ?  
5 A. Yes.  
6 Q. And dated October 4, 2011?  
7 A. Yes.  
8 Q. Is it with this letter that you produced to DOJ  
9 for the first time an attempt to identify the number of  
10 Spanish-surnamed persons who are not matched in the DPS  
11 records for driver's license and Texas ID?  
12 A. Well, let me look at the letter. I mean, I  
13 thought we provided it before this, but I could be  
14 wrong.  
15 Q. Take a look at Page 4 and paragraph number --  
16 well, it's got a number in front of it, 5, and  
17 specifically 5B.  
18 A. 5B, okay. Oh, okay. I guess we sent it with  
19 this letter, then. It looks like we sent them an Excel  
20 spreadsheet or something.  
21 Q. And so if you sent DOJ this information on  
22 October 4th, can you give me a sense of when you  
23 generated this information for the first time? And by  
24 that I mean, trying to identify, within the 605,576  
25 registered voters who the state advise do not have a

275

1 weeks following the provision of the Spanish surname  
2 information; is that correct?  
3 A. Right.  
4 Q. I just can only -- reading through these,  
5 honestly, it just seemed like -- it was just very  
6 stressful. I have to say. That's not a question, so  
7 you don't have say anything in response to that.  
8 But I did want to ask you whether, when  
9 you're talking about racial classification data in your  
10 October 27th letter, whether you're talking about  
11 something different than identifying Spanish-surnamed  
12 registered voters?  
13 A. Yes.  
14 Q. So when you're talking about Hispanics in the  
15 DPS database being an obvious under count, but can you  
16 explain why you think there was an obvious under count  
17 of Hispanics in the DPS database?  
18 A. Well, we knew -- and I don't have those -- we  
19 knew that they -- it was a very low number of Hispanics  
20 in the driver's database, like, you know, 5 or 6  
21 percent, and so we knew that had to be wrong. So we had  
22 some concerns about, you know, how reliable the data  
23 was. And I think that's -- I think we try to say that  
24 in this letter, that there are limitations with the  
25 data.

274

1 Texas driver's license or personal ID card, the number  
2 of people who are Spanish surnamed? Would you have done  
3 it shortly before October 4th or a little bit earlier  
4 than that?  
5 A. Well, I don't remember when we received the  
6 request for additional -- for additional information  
7 from the Justice Department, but it probably have been  
8 -- and I'm --  
9 Q. I think it was September 23rd.  
10 A. Okay. So it would have been sometime between  
11 September 23rd and, you know, before this -- before  
12 October 4th.  
13 Q. Already. So less than two weeks?  
14 A. Yeah.  
15 Q. Okay.  
16 MS. PERALES: Please mark this.  
17 (Rodriguez Exhibit 10 marked for  
18 identification.)  
19 Q. (By Ms. Perales) You have been handed what has  
20 been marked Rodriguez Deposition Exhibit 10. Do you  
21 recognize this as a letter from you dated October 27,  
22 2011, to Jennifer Maranzano from the DOJ?  
23 A. Yes.  
24 Q. I can only imagine that -- I mean, this is --  
25 what is this, three weeks? A little bit over three

276

1 Q. Do you know if DPS ever tried to update its  
2 Hispanic numbers by running a Spanish surname search?  
3 A. No. I mean, I don't know.  
4 Q. Okay. I'm going to ask you now about Spanish  
5 surname voter registration in the Secretary of State's  
6 data, the stuff that I know about.  
7 A. Okay.  
8 Q. You had mentioned earlier in your testimony  
9 that from time to time, you would pull information about  
10 Spanish-surnamed registered voters with respect to a  
11 jurisdiction when doing a Section 5 preclearance  
12 submission.  
13 A. Yes.  
14 Q. And you mentioned some local jurisdictions that  
15 you would pull that information for. Do you remember  
16 pulling or providing Spanish-surnamed registered voter  
17 information to DOJ when you submitted, in 1998, the  
18 statewide change to fill judicial vacancies following  
19 the Hardberger versus Angelini decision; do you remember  
20 that? 1998?  
21 A. I remember that whole decision and all of that,  
22 but I don't remember if we included it. We may have.  
23 Q. Do you remember getting an objection?  
24 A. Oh, yes. I do remember that. Yes.  
25 Q. Okay. All right. So moving back from the



**ESQUIRE**  
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO  
Facsimile: 512.328.8139

Suite 220  
3101 Bee Caves Road  
Austin, TX 78746  
www.esquiresolutions.com

<p style="text-align: center;">277</p> <p>1 objection, do you remember the objection letter talking</p> <p>2 about the fact you had provided them information on</p> <p>3 Spanish surname voter registration for the --</p> <p>4 A. The letter from the Justice Department?</p> <p>5 Q. Yes. Do you remember the Justice Department</p> <p>6 letter of objection referring to Spanish surname</p> <p>7 registered voter data?</p> <p>8 A. No, I don't remember that part of the letter.</p> <p>9 Q. Okay. But if it did, it would have come from</p> <p>10 the Secretary of State, right?</p> <p>11 A. Yes.</p> <p>12 Q. Now, redistricting, which you called another</p> <p>13 animal, is one in which also prepared Section 5</p> <p>14 submissions, correct?</p> <p>15 A. Yes. Sometimes, unless it went straight to</p> <p>16 court or something.</p> <p>17 Q. And when you prepared submissions,</p> <p>18 administrative submissions for redistricting, you</p> <p>19 routinely provide Spanish surname registered voter data</p> <p>20 for the state and for individual districts, correct?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. And, in fact, you are the source of Spanish</p> <p>23 surname registered voter data for the Texas Legislative</p> <p>24 Council when they build their redistricting database;</p> <p>25 yes?</p>	<p style="text-align: center;">279</p> <p>1 too.</p> <p>2 A. Right. Right.</p> <p>3 Q. Mr. Mortara aside.</p> <p>4 MR. MORTARA: But his wife does speak</p> <p>5 Spanish and is, as far as Mr. Mortara knows, not</p> <p>6 Hispanic.</p> <p>7 Q. (By Ms. Perales) Have you seen any study on the</p> <p>8 accuracy of your identification of Spanish surnamed</p> <p>9 registered voters with respect to being able to identify</p> <p>10 Hispanic voters in Texas?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 MS. PERALES: Please mark these two.</p> <p>14 (Rodriguez Exhibits 11 and 12 marked for</p> <p>15 identification.)</p> <p>16 Q. (By Ms. Perales) If you wouldn't mind looking</p> <p>17 at Rodriguez Deposition Exhibits 11 and 12 for me.</p> <p>18 A. Okay.</p> <p>19 Q. I want to ask you about the January 6th letter</p> <p>20 first. Do you recognize this as another letter to the</p> <p>21 Department of Justice?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. Well, it's not signed, but...</p> <p>25 Q. That's right. And if you wouldn't mind</p>
<p style="text-align: center;">278</p> <p>1 A. Yes.</p> <p>2 Q. And their GIS system?</p> <p>3 A. Yes. That's my understanding.</p> <p>4 Q. You were very careful earlier in your testimony</p> <p>5 when you talked about Spanish surname registered voters</p> <p>6 and some of the complaints that you had received, to</p> <p>7 talk about Spanish speaking. And I appreciated your</p> <p>8 carefulness in this, because you talked about people who</p> <p>9 complained to your office because they had received</p> <p>10 mailers in Spanish; is that right?</p> <p>11 A. Right.</p> <p>12 Q. And they would tell you, "I'm not Spanish</p> <p>13 speaking," correct?</p> <p>14 A. Right.</p> <p>15 Q. Okay. Is it possible to be Hispanic and not</p> <p>16 Spanish speaking?</p> <p>17 A. Yes.</p> <p>18 Q. So it could have been that you correctly</p> <p>19 identified this person as a Spanish surnamed person and</p> <p>20 even an Hispanic person, but they didn't speak Spanish?</p> <p>21 A. Yes, that could happen.</p> <p>22 Q. Okay. And so speaking Spanish is not the same</p> <p>23 as being Hispanic, is it?</p> <p>24 A. No.</p> <p>25 Q. And, in fact, nonHispanic people speak Spanish,</p>	<p style="text-align: center;">280</p> <p>1 checking and seeing that the January 12th letter is</p> <p>2 signed by Keith Ingram.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And did Keith Ingram become director of</p> <p>5 Elections after you left or before you left?</p> <p>6 A. After I left.</p> <p>7 Q. And what happened to Elizabeth Winn?</p> <p>8 A. She was acting director for a while, and then</p> <p>9 when Keith was named or came on board, she went back to</p> <p>10 her duties as director of the Legal section.</p> <p>11 Q. Who took your place when you left?</p> <p>12 A. Well, Elizabeth basically would wore two hats.</p> <p>13 I think she acting director of the Division and also</p> <p>14 director of the Legal section.</p> <p>15 Q. What is her title now?</p> <p>16 A. I believe it's Director of Legal section.</p> <p>17 Q. Okay.</p> <p>18 A. But, I mean, maybe it's changed, but that's</p> <p>19 what it was before I left.</p> <p>20 Q. All right. So from what I can figure out --</p> <p>21 well, first of all, let me ask you: Did you draft the</p> <p>22 January 6th letter that we're looking after here before</p> <p>23 you left?</p> <p>24 A. I don't think so, but I will look at it. I did</p> <p>25 not write this letter.</p>

<p style="text-align: center;">281</p> <p>1 Q. It doesn't sound like you, but I had to ask.</p> <p>2 Let me point you to the language on Page 2</p> <p>3 of the letter you're holding from January 6th. There</p> <p>4 are some bullet points, and I want you to look at bullet</p> <p>5 point 5. Look at bullet point 5 that starts with, "Use</p> <p>6 of Hispanic surname."</p> <p>7 A. Okay.</p> <p>8 Q. When you were at the Secretary of State's</p> <p>9 Office, did you ever write or offer the opinion that use</p> <p>10 of the Hispanic surname is an unreliable methodology for</p> <p>11 the purpose of this exercise, which we can understand is</p> <p>12 identifying Hispanics?</p> <p>13 A. No. And I think we -- had I offered this</p> <p>14 earlier with Ms. Westfall, also, that's it -- you know,</p> <p>15 we know it's not a perfect process, but, you know, it</p> <p>16 was our belief at the time that it was -- it was</p> <p>17 probably the only available tool we had to try and</p> <p>18 identify Spanish surname voters, Hispanic voters. And</p> <p>19 furthermore, it was also pursuant to an agreement with</p> <p>20 the Justice Department as sort of an authorized way to</p> <p>21 identify Hispanic voters.</p> <p>22 Q. And the courts accept it as such in</p> <p>23 redistricting litigation, don't they?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And now if you look with me in the</p>	<p style="text-align: center;">283</p> <p>1 fact that I have reviewed, you know, some of these</p> <p>2 documents where I stated that we made referrals to the</p> <p>3 AG maybe twice on voter impersonation, and that may have</p> <p>4 been based on somebody like another person's analysis of</p> <p>5 all the complaints.</p> <p>6 Q. So you don't know of a specific incident, other</p> <p>7 than the one in Harris County involving the son using</p> <p>8 his father's voter certificate? Because you can</p> <p>9 impersonate a voter with other documents, under the</p> <p>10 current law, besides the voter certificate; yes?</p> <p>11 A. Right.</p> <p>12 Q. Okay. So with respect only to the use of the</p> <p>13 voter certificate, is it correct to say, then, that you</p> <p>14 were only aware of one incident that you heard of where</p> <p>15 a son used the voter certificate of his father to vote?</p> <p>16 A. Well, I think it would be fair to say that</p> <p>17 that's a specific fact scenario that I specifically</p> <p>18 remember. But I also feel comfortable saying that we</p> <p>19 had some -- you know, at least two complaints where that</p> <p>20 was an allegation. I don't remember the underlying</p> <p>21 facts under those allegations.</p> <p>22 Q. So what -- do you remember those two cases</p> <p>23 solving allegations of the use of a voter certificate?</p> <p>24 A. I don't remember precisely. And voter</p> <p>25 impersonation, I mean, that's not really an offense</p>
<p style="text-align: center;">282</p> <p>1 January 12th letter, which looks a lot like the January</p> <p>2 6th letter, if you go to the fifth bullet point again on</p> <p>3 Page 2, you'll see it says, "Hispanic surname analysis</p> <p>4 is an imprecise substitute for accurate racial data."</p> <p>5 Do you have any idea why the language was</p> <p>6 changed from "unreliable" to "imprecise"?</p> <p>7 A. I don't know.</p> <p>8 Q. Did you work on editing any form of this</p> <p>9 letter --</p> <p>10 A. No.</p> <p>11 Q. -- before you left?</p> <p>12 A. No.</p> <p>13 Q. Are you familiar with -- are you familiar with</p> <p>14 any incident in which an individual presented, for</p> <p>15 voting, the voter certificate of a different individual</p> <p>16 in order to impersonate that voter?</p> <p>17 A. I think there was a case in Houston where</p> <p>18 somebody, I think a son, showed his deceased father's</p> <p>19 certificate or something along those lines.</p> <p>20 Q. Other than the incident that you heard of</p> <p>21 involving a son presenting a certificate of his father,</p> <p>22 are you aware of any other incidents in which one</p> <p>23 individual used the voter certificate of a person in</p> <p>24 order to vote?</p> <p>25 A. I can't recall any right now, except for the</p>	<p style="text-align: center;">284</p> <p>1 under the Election Code. So, when we were asked to</p> <p>2 analyze that, we'd have to sort of look at the</p> <p>3 complaints and say, well, does that fit under this</p> <p>4 category, which was sort of a category that's not really</p> <p>5 defined. We know what it means, but...</p> <p>6 Q. I understand. But what you're saying is that</p> <p>7 with specific reference to one person using another</p> <p>8 person's voter certificate, that exact document, you can</p> <p>9 recall one specific incident involving a son voting with</p> <p>10 his deceased father's certificate and that you recall</p> <p>11 other voter impersonation compliant, two other, in which</p> <p>12 the certificate might or might not have been involved?</p> <p>13 A. Yes.</p> <p>14 Q. And can you think of a valid reason to remove</p> <p>15 the voter certificate from the list of acceptable ID for</p> <p>16 voting?</p> <p>17 A. You know, I can only speculate that the</p> <p>18 Legislature felt it was important to have a photo ID, so</p> <p>19 since the certificate doesn't have a photo, they didn't</p> <p>20 feel like that was strong enough.</p> <p>21 Q. Okay. I understand. And for so many years, you</p> <p>22 had to defer to the policy decisions of the</p> <p>23 Legislature. But I want to ask you whether you, based</p> <p>24 on your 20-plus years in the Secretary of State's Office</p> <p>25 and your familiarity with one very specific incident</p>



285

1 involving the improper use of a voter certificate by a  
2 son to vote for his deceased father, whether you can  
3 think of a valid reason, based in reality, and I'll be  
4 more specific here, to prevent voter fraud by removing  
5 the voter certificate from the list of acceptable ID for  
6 voting?

7 A. You know, as director of Elections, you know,  
8 my duty was to implement the law, and, you know, it's  
9 not my duty to the second guess the law. And so for  
10 photo ID, the stated intent was that this is going to,  
11 you know, strengthen our voter laws. It's going to, you  
12 know, increase confidence in the process because there's  
13 going to be an affirmative identification at the polls.

14 So in that sense, the certificate alone  
15 probably doesn't meet that goal. You know, I'm not the  
16 Legislature, so, you know, so I guess that's my answer,  
17 if you let me get away with that.

18 Q. (By Ms. Perales) I won't. I have to object as  
19 nonresponsive, because I'm asking for your opinion, and  
20 maybe the first and last time I'll ask. I mean, I have  
21 to ask you for your opinion. And you spent many, many  
22 years in the Office. If there's anybody in the state of  
23 Texas who is an expert on the operation of elections and  
24 all things surrounding elections, including the  
25 acceptance of voters for voting, it's you.

286

1 A. My opinion is, I think both sides of the issue  
2 are a little exaggerated and overstated and the truth is  
3 probably somewhere in the middle.

4 Q. And so with respect to your opinions  
5 specifically on the removal of the voter certificate  
6 from the list of ID that should be presented for voting,  
7 can you think of a reason, based in reality, to remove  
8 the voter certificate from the list of ID in order to  
9 prevent voter fraud?

10 A. Well, I mean, as a practical matter, what we  
11 hear from election officials is most voters don't  
12 present it anyway.

13 Q. So is there a reason to remove it, in your  
14 opinion?

15 A. I mean, it's hard to examine that without  
16 knowing that -- if the mandate is photo ID, then there's  
17 a reason to remove it.

18 Q. All right. But putting aside SB 14, our  
19 current law, which we have a voter ID law in Texas,  
20 includes the voter certificate as a form of ID for  
21 voting, and you testified you can think of one very  
22 specific incident in which a son used his father's voter  
23 certificate after his father passed away to vote in his  
24 place. Knowing everything you do about Texas election  
25 administration, and this one very specific incident and

287

1 two other possible incidents where you don't know  
2 whether the certificate was involved --

3 A. Right.

4 Q. -- what is your opinion or do you have -- well,  
5 I'm not going to ask the other opinion, because you'll  
6 tell me you don't. But in your opinion, is there a  
7 valid reason, based in reality, to remove the voter  
8 certificate from the list of acceptable ID in order to  
9 prevent fraud?

10 MR. MORTARA: Objection, asked and  
11 answered.

12 Q. (By Ms. Perales) It's a yes or no question, and  
13 so I need a yes or no answer.

14 A. Yes. I think there would be a reason if the  
15 stated goal is to increase confidence in the process and  
16 to ensure the public that people aren't voting  
17 fraudulently, whether it really happened in reality or  
18 not aside, but if the thought is we want to promote  
19 confidence in the process and the rules in the system,  
20 then, yes, I think that some folks might feel more  
21 confident about voting if they knew that only these  
22 governmental photo IDs are allowed at the polling place.

23 Q. Have you had received any complaints from  
24 voters who said they lacked confidence in the system  
25 because the voter certificate could be used for voter

288

1 identification?

2 A. No.

3 MS. PERALES: These are my last questions,  
4 the Dechert folder.

5 (Rodriguez Exhibit 13 marked for  
6 identification.)

7 Q. (By Ms. Perales) You have been handed what the  
8 court reporter has marked Rodriguez Deposition Exhibit  
9 13. I'm going to ask my last questions of you regarding  
10 the Public Education Plan under HAVA.

11 A. Okay.

12 Q. Did you, when you were at the Secretary of  
13 State's Office, work on the current Public Education  
14 Plan?

15 A. I gave some feedback on this RFP, but I was not  
16 the primary author or driver of it.

17 Q. Was the Public Education Plan developed  
18 in-house at the Secretary of State?

19 A. The request for a proposal was.

20 Q. Okay. And when you say request for a proposal,  
21 you mean Rodriguez Deposition Exhibit 13, yes?

22 A. Yes.

23 Q. Okay. And what's the difference between the  
24 RFP and the Public Education Plan under Senate Bill 14,  
25 because I noticed you made a distinction, so I wasn't



ESQUIRE  
DEPOSITION SOLUTIONS

Toll Free: 800.211.DEPO  
Facsimile: 512.328.8139

Suite 220  
3101 Bee Caves Road  
Austin, TX 78746  
www.esquiresolutions.com

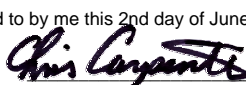

<p style="text-align: center;">289</p> <p>1 sure.</p> <p>2 A. Well, I mean, the RFP is -- basically, it's</p> <p>3 asking for proposals to help the Secretary of State</p> <p>4 develop a statewide voter education program. So the</p> <p>5 actual voter education program is going to be different</p> <p>6 than this. This is just sort of setting out, sort of,</p> <p>7 the minimum requirements that the office wanted to see</p> <p>8 in responses.</p> <p>9 Q. Okay. And so the responses to the request for</p> <p>10 proposal would be, in essence, this is how it should</p> <p>11 look, the Public Education Plan should look?</p> <p>12 A. I don't think we had a preconceived notion as</p> <p>13 to how it would look. I mean, we had certain</p> <p>14 requirements we wanted see them meet, but I think they</p> <p>15 were also looking for creative solutions as to how to</p> <p>16 get the word out and educate voters.</p> <p>17 Q. Okay. You were still at the Secretary of State</p> <p>18 when the deadline arrived for responses --</p> <p>19 A. Yes.</p> <p>20 Q. -- to the RFP; yes?</p> <p>21 A. Yes.</p> <p>22 Q. How many proposals did the Secretary of State</p> <p>23 receive in response to this RFP?</p> <p>24 A. I don't know. I mean, I helped, or at some</p> <p>25 point, I reviewed this document, but I did not see any</p>	<p style="text-align: center;">291</p> <p>1 Q. There are some BIC regulations, the Texas</p> <p>2 Administrative Code 37 15.181 through .185. Does this</p> <p>3 sound familiar to you?</p> <p>4 A. Yeah, maybe, on the procurement process or --</p> <p>5 Q. I'm looking now.</p> <p>6 A. Okay.</p> <p>7 Q. With respect to the proposal that was selected,</p> <p>8 which we think there's been a proposal selected, who at</p> <p>9 the Secretary of State's Office would be most</p> <p>10 knowledgeable about the contents of the proposals and</p> <p>11 the proposal that was ultimately selected?</p> <p>12 A. Probably the communications director.</p> <p>13 Q. Okay. Eligibility for Election Identification</p> <p>14 Certificate. We have to let the court reporter mark it.</p> <p>15 (Rodriguez Exhibit 14 marked for</p> <p>16 identification.)</p> <p>17 Q. (By Ms. Perales) The court reporter has handed</p> <p>18 you what has been marked Rodriguez Depo Exhibit 14.</p> <p>19 It's selections from the Texas Administrative Code on</p> <p>20 Eligibility For Election Identification</p> <p>21 Certificate. Did you work on these regulations?</p> <p>22 A. These are the DPS's regulations it looks like?</p> <p>23 Q. Yes, having to do with this new election</p> <p>24 identification certificate under SB 14.</p> <p>25 A. I may have seen a draft of these.</p>
<p style="text-align: center;">290</p> <p>1 of the responses that came in.</p> <p>2 Q. So would you be able to answer any questions</p> <p>3 regarding whether the proposals that the Secretary of</p> <p>4 State received included plans designed to target African</p> <p>5 Americans or Hispanic communities?</p> <p>6 A. I couldn't answer any of those questions.</p> <p>7 Q. Do you know whether a proposal has been</p> <p>8 selected as a result of this RFP?</p> <p>9 A. I think it has, because I noticed on the</p> <p>10 website that the Secretary had sort of picked off a new</p> <p>11 kind of an education tour, and I presume that's part of</p> <p>12 this. But I don't know for sure.</p> <p>13 Q. Okay. Do you know whether any legislators</p> <p>14 encouraged the Secretary of State's Office to select a</p> <p>15 particular proposal or contractor?</p> <p>16 A. I don't know.</p> <p>17 MR. MORTARA: Well --</p> <p>18 MS. PERALES: It's not legislative.</p> <p>19 MR. MORTARA: Yeah. Sorry.</p> <p>20 A. No, I don't know.</p> <p>21 Q. (By Ms. Perales) Okay. I'm going off that</p> <p>22 topic now.</p> <p>23 Do you know anything about the substance</p> <p>24 of the proposal that was selected?</p> <p>25 A. No.</p>	<p style="text-align: center;">292</p> <p>1 Q. Do you know which agency did the first draft?</p> <p>2 A. DPS.</p> <p>3 Q. Okay. So you might have seen a draft of this</p> <p>4 somewhere along the line?</p> <p>5 A. Yeah. I think they were asking for some</p> <p>6 feedback.</p> <p>7 Q. Do you remember providing any feedback?</p> <p>8 A. I believe we did.</p> <p>9 Q. Do you remember when all of this occurred?</p> <p>10 A. Well, I don't -- I know that -- I think it was</p> <p>11 in September or maybe October, that we met with DPS to</p> <p>12 discuss these rules. I don't know that I ever saw what</p> <p>13 they actually proposed in the register.</p> <p>14 Q. Uh-huh.</p> <p>15 A. So it says it was effective December 13th, so</p> <p>16 they probably proposed it sometime in October, but</p> <p>17 that's what I know.</p> <p>18 Q. Do you know the source of the suggestion</p> <p>19 involving fingerprints? Did that come from the</p> <p>20 Secretary of State?</p> <p>21 A. No, that did not come from the Secretary of</p> <p>22 State. I'm trying to find that, where that is.</p> <p>23 Q. I know. I am, too. But it's in here</p> <p>24 somewhere.</p> <p>25 A. Yeah.</p>





<p style="text-align: center;">293</p> <p>1 Q. Do you remember adding items to this long list 2 of supporting identification under 15.182? And do you 3 remember in your comments from the Secretary of State's 4 Office adding additional documents that you thought 5 should be used in order to support the application for 6 an election identification card?</p> <p>7 A. No. I think they were following their -- the 8 process for obtaining an personal identification number, 9 as I recall.</p> <p>10 Q. Okay. I found the fingerprints. It's in 11 15.183. The applicant must provide fingerprints in 12 order to get an election identification card. You don't 13 remember that coming from the Secretary of State?</p> <p>14 A. No.</p> <p>15 Q. Do you remember having any conversations about 16 that requirement?</p> <p>17 A. Yes.</p> <p>18 Q. And tell me what those conversations were.</p> <p>19 THE WITNESS: Is there any privilege on 20 this?</p> <p>21 Q. Who is the conversations with? Was it DPS?</p> <p>22 A. It was DPS. Okay.</p> <p>23 MR. MORTARA: I mean, you and DPS may 24 share a conversation, but, for instance also included 25 OAG on legal advice, that would be privileged. DPS</p>	<p style="text-align: center;">295</p> <p>1 clarification. If these conversations were not 2 ultimately for the purpose of you rendering shared legal 3 advice between DPS and yourself to your client, the 4 Secretary of State or the executive body thereof, you 5 may answer. If it's part of that process, you may not, 6 about the substance of this communication.</p> <p>7 Q. (By Ms. Perales) So was the substance of the 8 communication to DPS for the purpose of giving legal 9 advice to your executive office and your boss, the 10 Secretary of State?</p> <p>11 A. I think it was for the purpose of giving some 12 legal advice to DPS.</p> <p>13 MR. MORTARA: I think you can't answer 14 that.</p> <p>15 THE WITNESS: Can or cannot?</p> <p>16 MR. MORTARA: Cannot.</p> <p>17 Q. (By Ms. Perales) If you just said it was a 18 stupid idea, I think that counts.</p> <p>19 A. As legal advice?</p> <p>20 Q. Not legal advice. As not legal advice.</p> <p>21 MR. MORTARA: Things can be stupid because 22 they are not legal.</p> <p>23 MS. PERALES: That's true. Very true.</p> <p>24 Okay.</p> <p>25 I'd like to take a one-minute break.</p>
<p style="text-align: center;">294</p> <p>1 would have the same lawyer. If you and DPS were just 2 having conversations about what to do with respect to 3 these regulations, and you don't think you were giving 4 legal advice, you can answer.</p> <p>5 MS. PERALES: She doesn't have an 6 attorney- client relationship with DPS.</p> <p>7 MR. MORTARA: That will be common interest 8 between her and DPS Lawyers. So, for instance, they can 9 have a common legal interest and coordinate, just like 10 you get to talk to the Justice Department. You have a 11 common interest, and that's -- I don't get to discover 12 what you're saying to the Justice Department.</p> <p>13 So if it was legal advice that you and DPS 14 lawyers were coordinating on, you can't answer. If it's 15 not legal advice, you can answer.</p> <p>16 Q. (By Ms. Perales) Well, let me first ask you 17 then who you had the communication with at DPS regarding 18 the fingerprints?</p> <p>19 A. It was DPS general counsel, and kind of their 20 government relations person. I don't know what her 21 title is exactly. I think the director or the assistant 22 director of the driver's license department. And one or 23 two other people from DPS. And I think John Sepehri was 24 present and Elizabeth Winn was present.</p> <p>25 MR. MORTARA: And just further</p>	<p style="text-align: center;">296</p> <p>1 (Recess from 6:45 p.m. to 6:48 p.m.)</p> <p>2 MS. PERALES: So we are back on the 3 record.</p> <p>4 All right. I reserve the remainder my 5 questions for the time of trial. I pass the witness to 6 Mr. Mortara.</p> <p>7 MR. MORTARA: No questions.</p> <p>8 MS. PERALES: That's it. The deposition 9 is concluded.</p> <p>10 (Signature reserved.) 11 (Deposition concluded at 6:50 p.m.)</p> <p>12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>



<p style="text-align: center;">297</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 RE: TEXAS VS. HOLDER, ET AL</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 I, ANN MCGEEHAN, have read the foregoing deposition</p> <p>21 and hereby affix my signature that same is true and</p> <p>22 correct, except as noted above.</p> <p>23 _____</p> <p>24 ANN MCGEEHAN</p> <p>25</p>	<p style="text-align: center;">299</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF COLUMBIA</p> <p>3 STATE OF TEXAS, )</p> <p>4 Plaintiff, )</p> <p>5 VS. )</p> <p>6 ERIC H. HOLDER, JR. in his )</p> <p>7 official capacity as Attorney )</p> <p>8 General of the United States, )</p> <p>9 Defendant, )</p> <p>10 ERIC KENNIE, et al, )</p> <p>11 Defendant-Intervenor, )</p> <p>12 TEXAS STATE CONFERENCE OF ) CASE NO. 1:12-CV-00128</p> <p>13 NAACP BRANCHES, ) (RMC-DST-RLW)</p> <p>14 ) Three-Judge Court</p> <p>15 Defendant-Intervenor, )</p> <p>16 TEXAS LEAGUE OF YOUNG VOTERS )</p> <p>17 EDUCATION FUND, et al, )</p> <p>18 Defendant-Intervenor, )</p> <p>19 TEXAS LEGISLATIVE BLACK )</p> <p>20 CAUCUS, et al, )</p> <p>21 Defendant-Intervenor, )</p> <p>22 VICTORIA RODRIGUEZ, et al., )</p> <p>23 Defendant-Intervenor. )</p> <p>24 REPORTER'S CERTIFICATION</p> <p>25 DEPOSITION OF ANN MCGEEHAN</p> <p>MAY 31, 2012</p> <p>I, Chris Carpenter, Certified Shorthand Reporter in</p> <p>and for the State of Texas, hereby certify to the</p> <p>following:</p> <p>That the witness, ANN MCGEEHAN, was duly sworn by</p>
<p style="text-align: center;">298</p> <p>1 THE STATE OF _____)</p> <p>2 COUNTY OF _____)</p> <p>3</p> <p>4 Before me, _____, on this day</p> <p>5 personally appeared ANN MCGEEHAN, known to me (or proved</p> <p>6 to me under oath or through _____</p> <p>7 (description of identity card or other document) to be</p> <p>8 the person whose name is subscribed to the foregoing</p> <p>9 instrument and acknowledged to me that they executed the</p> <p>10 same for the purposes and consideration therein</p> <p>11 expressed.</p> <p>12 Given under my hand and seal of office</p> <p>13 this _____ day of _____, 2012.</p> <p>14</p> <p>15 _____</p> <p>16 NOTARY PUBLIC IN AND FOR</p> <p>17 THE STATE OF _____</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">300</p> <p>1 the officer and that the transcript of the oral</p> <p>2 deposition is a true record of the testimony given by</p> <p>3 the witness;</p> <p>4 That the deposition transcript was submitted on the</p> <p>5 _____ day of _____, 2012, to the witness or to the</p> <p>6 attorney for the witness for examination, signature and</p> <p>7 return to _____, by</p> <p>8 _____, 2012; and if returned, the original</p> <p>9 transcript will forwarded to Elizabeth Westfall, the</p> <p>10 custodial attorney;</p> <p>11 That the amount of time used by each party at the</p> <p>12 deposition is as follows:</p> <p>13 Ms. Westfall: 4 hours, 34 minutes</p> <p>14 Ms. Perales: 2 hours, 13 minutes</p> <p>15 I further certify that I am neither counsel for,</p> <p>16 related to, nor employed by any of the parties or</p> <p>17 attorneys in the action in which this proceeding was</p> <p>18 taken, and further that I am not financially or</p> <p>19 otherwise interested in the outcome of the action.</p> <p>20 Certified to by me this 2nd day of June, 2012</p> <p>21  </p> <p>22 Chris Carpenter, Texas CSR 1151</p> <p>23 Expiration Date: 12/31/2012</p> <p>24 100 Congress Avenue, Suite 2000</p> <p>25 Austin, TX 78701</p> <p>(512)328-5557</p> <p>Firm Registration No. 283</p>